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इस भाग में भिन्न पृष्ठ संख्या ही जाती है जिससे कि यह घलग संकलन के रूप में रखा जा सके।

separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भाग के असाधारण राजपत्र 12 मई, 1969 तक प्रकाशित किये गये:—

The undermentioned Gazettes of India Extraordinary were published up to the 12th May, 1969:—

Issue No.	No. and Date	Issued by	Subject
176	S.O. 1804, dated 12th May, 1969.	Election Commission of India	Election to the House of the People from the 25-Sultapur Parliamentary Constituency.
	एस० ओ० 1805, दिनांक 12 मई, 1969.	भारत निर्वाचन आयोग	25-सुलतानपुर निर्वाचन क्षेत्र से लोक सभा के लिये निर्वाचन।
177	S.O. 1806, dated 12th May, 1969.	Ministry of Information and Broadcasting	Approval of the film as specified in the Schedule therein.
	S.O. 1807, dated 12th May, 1969.	Do.	Approval of the films as specified in the Schedule therein.
	S.O. 1808, dated 12th May, 1969.	Do.	Approval of the films as specified in the Schedule therein.

Issue No.	No. and Date	Issued by	Subject
एस० श्रो० 1809,	दिनांक 12 मई, 1969.	सूचना तथा प्रसारण मंत्रालय	सूची में दी गई फिल्मों को स्वीकृत करना।
एस० श्रो० 1810,	दिनांक 12 मई, 1969.	नदैव	सूची में दी गई फिल्मों को स्वीकृत करना।
एस० श्रो० 1811,	दिनांक 12 मई, 1969.	तदैव	सूची में दी गई फिल्मों को स्वीकृत करना।

अपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मानपत्र भेजने पर भेज दी जायेंगी। मानपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुँच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—लाइन 3—उपलब्ध (ii)

PART II—Section 3—Sub-section (ii)

(एका मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ सेवा प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विविध प्रावेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION OF INDIA

New Delhi, the 24th March 1969

S.O. 2010.—In pursuance of section 116C (2) (b) of the Representation of the People Act, 1951, the Election Commission hereby publishes the Judgment pronounced on the 11th March, 1969, by the Supreme Court of India, New Delhi, in election petition No. 43 of 1967.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL, NO. 1706 OF 1967

Atam Das—Appellant

VS.

Suriya Prasad—Respondent.

JUDGMENT

Shah, J.

By order dated March 20, 1968, we called for findings from the High Court of Madhya Pradesh on the following three issues:

“(1) Whether the word undertaken by the appellant under the contract dated February 25, 1954, had been completed before January 19, 1967, departmentally or through other contractors?

- (2) If the work was not completed on January 19, 1967, has the project in respect of the incomplete work been abandoned?
- (3) If the project was not abandoned, was it intended to get the same completed through the appellant under the terms of the contract dated February 25, 1954?"

The parties were given liberty to lead evidence on those issues. Accordingly the parties led oral evidence and produced a mass of documentary evidence.

The learned Judge found the first issue against the appellant; on the second issue he held that the project was abandoned, and recorded on finding on the third issue.

The contest between the parties now centers round the second issue. Counsel for the respondent contended that the evidence led before the High Court cannot be considered because there was no clear plea raised in the reply to the election petition about abandonment or renunciation of the contract between the Government and the appellant, and that in any event the evidence does not justify a finding in favour of the appellant on that issue. In the judgment under appeal the High Court had observed that "the case in which neither party has insisted on the performance of the contract for an inordinate length of time and in such cases it may be said that the parties have mutually abandoned the contract. In such a case, the contract may be treated as terminated or discharged by abandonment but a party relying on abandonment must expressly plead and give its particulars," and since the appellant "did not canvass in this case that there was mutual abandonment of the contract in question by the parties", the contention could not be accepted. But a person is disqualified from offering himself as a candidate at an election if at the date of the nomination there subsists a contract entered into by him in the course of his business with the appropriate Government for the supply of goods or for the execution of any work undertaken by that Government within the meaning of s. 9A of the Representation of the People Act, 1951. The appellant was carrying on business as a building contractor and had in 1954 entered into a contract for the execution of works undertaken by the Government of India. To make out a case of disqualification it had to be established that the contract subsisted on January 19, 1967, when the nomination was filed by the appellant. The burden of proving that issue lay upon the respondent. By merely proving that the candidates had at some time in the past entered into a contract to execute works, the burden was not discharged: it had further to be established that the contract was subsisting at the crucial date. In making that enquiry it was necessary to decide whether the contract was completed, or if not completed, it was renounced. Whether there was a subsisting contract being the issue to be decided, the trial necessarily included an inquiry, even in the absence of an express plea, whether the contract was completed or determined at the crucial date. This Court has after hearing the parties called for a finding on the question whether there subsisted a contract on January 19, 1967, between the appellant and the Government of India and for that purpose to determine whether the contract of the year 1954 was renounced or abandoned. The parties have led evidence and the issue whether there existed a contract on the crucial date which disqualified the appellant must be decided.

Under the terms of the contract the appellant had undertaken to raise the height of the Burj to 46 feet. It is common ground that he did not raise the height of the Burj above 35 feet. The authorities were dissatisfied with the work done by him till the end of March 1956. Work was inspected by the Archaeological Engineer in 1957 and was found to be "defective, unsatisfactory and incomplete." The Archaeological Engineer made adverse remarks against the appellant and further work was discontinued. The Director General visited the site in July 1958 and found the work incomplete, unsatisfactory and defective. He remarked that the contractor may "be categorically told that he is not to proceed with the work", and that the remaining work which may include the heightening of the Burj by not more than two feet, filling up its interior and rendering its top water-tight may be done by departmental labour." Accordingly the appellant was informed by letter dated August 13, 1958, that he was "not to proceed with the work any more." The appellant was clearly informed that he was not to raise the height of the Burj upto 46 feet as originally agreed: he was only asked to rectify the defects in the construction work executed by him. This was unmistakable evidence of determination of the contract.

But counsel for the respondent relying upon certain documents contended that the intimation by letter dated August 13, 1958, was according to the terms

of the contract and the subsequent conduct of the parties established that the appellant did not treat the letter as determinative of the contract, and offered to complete the contract. Counsel for the respondent submitted that the appellant having declined to accept the termination of the contract, subsequent inaction on the part of the appellant did not have the effect of either determining the contract or renunciation or abandonment of the contract.

Counsel relied upon the terms of the contract in support of the plea that there was no rescission on the part of the Government or any intention to abandon the contract. He relied upon the terms of cl. 3 of the contract between the appellant and the Government that;

"In any case in which under any clause or clauses of this contract the contractor shall have rendered himself liable to pay compensation amounting to the whole of his security deposit (whether paid in one sum or deducted by instalments or committed a breach of any of the terms contained in clause 19-B, the Divisional Officer, on behalf of the Governor General of India, shall have power to adopt any of the following courses, as he may deem best suited to the interests of Government:—

- (a) To rescind the contract (of which rescission notice in writing to the contractor under the hand of the Divisional Officer shall be conclusive evidence), and in which case the security deposit of the contractor shall stand forfeited, and be absolutely at the disposal of Government;
- (b) To employ labour paid by the Public Works Department and to supply materials to carry out the work, or any part of the work debiting the contractor with the cost of the labour and price of the materials (of the amount of which cost and price a certificate of the Divisional Officer shall be final and conclusive against the contractor) and crediting him with the value of the work done, in all respects in the same manner and at the same rates as if it had been carried out by the contractor under the terms of his contract;
- (c) To measure up the work of the contractor, and to take such part thereof as shall be unexecuted out of his hands and to give it to another contractor to complete, in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor, if the whole work had been executed by him shall be borne and paid by the original contractor and may be deducted from any money due to him by Government under the contract or otherwise, or from his security deposit or the proceeds of sale thereof, or a sufficient part thereof.

The three conditions mentioned in cl. 3 of the contract merely indicate the action which the Government may take if the contractor commits default. If the conditions of the contract are not fulfilled it is open to the Government to rescind the contract and to forfeit the deposit, or to allow the contract to remain outstanding and to complete the work departmentally as if the contract remains outstanding and charge the contractor with all the expenditure incurred for completing the work or to rescind the contract and to appoint another contractor to complete the unexecuted work.

The sequence of events may be examined to determine whether after the intimation dated August 13, 1958 the contract remained outstanding. By letter dated July 23, 1958 Ext. D-1 the Director General of Archaeology wrote to the Superintendent, Department of Archaeology, Bhopal that a joint inspection of the work done by the appellant at the site had let him to believe that certain course of action should be taken in the matter and he suggested that (1) the contractor may be informed that he was liable to pay certain sum of money; (2) that the contractor should be informed that he was not to proceed with the work; and (3) that the remaining work, which may include the heightening of the Burj by not more than 2 feet, filling up its interior and rendering its top watertight, may be done by departmental labour. The Archaeological Department clearly abandoned the project of increasing the height of the Burj upto 48 as originally intended; it was satisfied with raising the height of the Burj upto 35 ft. only. The Director General of Archaeology intimated that the Government did not intend to remain bound by the terms of the contract and he was terminating the contract.

By letter dated August 13, 1958, Ext. D-11, the Superintendent, Department of Archaeology, wrote to the appellant that he was liable to pay for cement and stone supplied and unless the tools supplied to him were returned to pay the cost of the tools also. The appellant was called upon to deposit the amount demanded and the letter proceeded to state,

"Further more, you are hereby informed that you have not to proceed with the work any more."

By letter dated June 27, 1958, the Superintendent, Department of Archaeology, addressed a memorandum to the appellant in continuation of the letter dated August 13, 1958, reiterating "that the cost of cement and stones may be reimbursed and the tools may be returned. The appellant was informed that he will be paid for the cost of R.C.C. work done by him," but that he was bound to rectify the defects in the work executed by him, as pointed out at the site.

By letter dated July 19, 1959, the appellant wrote to the Superintendent, Department of Archaeology, that he was willing to carry out the orders regarding the repairs to the *Bur*, and that arrangements may be made to send the "Work In-Charge" at the site so that the work may be done according to his instructions. He also stated that he had never refused to comply with the orders. By letter dated September 27, 1959, the appellant again reiterated his desire to rectify the defects pointed out to him.

It appears, however, that nothing concrete was done, and on April 12, 1961, the appellant's lawyer addressed to a letter to the Director General, Department of Archaeology, asserting that the appellant had completed his "part of the work almost entirely" and that he was shown certain defects which he had also removed, but when the appellant demanded payment for the work done the Department asked him to do certain other things which were not to be done by him. He denied that the work done by him was defective. He also stated that if the defects were not intimated to him in writing and their photographs were not supplied within a month from the receipt of the letter, it will be presumed that there were no defects in work done and that he will be entitled to receive the full amount for the work done.

This correspondence clears evidence an intention to treat the original contract as determined. The appellant was told that the amount payable for the work done by him could only be paid to him if he returned the building materials and the tool supplied to him, and rectified the defects pointed. The letters do not evidence a 'subsisting contract: they establish that the contract was treated as determined.

After April 12, 1961, there is on the record no correspondence between the appellant and the Government. The Government had claimed damages against the appellant for defective work executed by him and for return of certain materials supplied and the value of the tools and had called upon the appellant to carry out the repairs. The appellant's claim was that he was entitled to payment for the work done by him, and that he had carried out the repairs. The security deposit had not been returned to the appellant, nor had he been paid the amount claimed by him.

The amount alleged to be due by the appellant on account of defective workmanship and for the value of the materials supplied to him has also not been demanded by the Government. Failure to settle the respective claims does not evidence an intention to keep the original contract subsisting. For more than 5 years 9 months the appellant and the Government of India have not taken steps for settlement of their respective claims. The silence was evidence of acquiescence in the abandonment of the contract, and not of a subsisting contract. Even if the demand that the defects pointed out in the work executed by the appellant be repaired and the offer made by the appellant to carry out the repairs establish a contractual relation inaction for nearly six years on the part of the Government and the appellant is evidence of abandonment of the contractual relation.

The learned Trial Judge observed in his report in paragraph 33 that:

"No paper whatsoever, either from Bhopal Office or Delhi Office has been produced on record by the parties to this litigation showing that the Government expressly abandoned this part of the work at any time after the lawyer's notice dated April 12, 1961 till Shri Atam Das filed his nomination paper on January 19, 1967. So there was no express abandonment on the part of the Government as far as

this part of the incomplete work is concerned. But the position seems to have been altered because of the attendant circumstances, conduct of the parties and inordinate delay during which neither party insisted on the performance of this part of the incomplete work."

The learned Judge concluded:

"Accordingly where, as here, neither party has insisted on the performance of this part of the work, namely, the rectification of the defects for more than 5½ years which is undoubtedly an inordinate length of time, it is reasonable to infer that the parties i.e. the Government and Shri Atam Das have mutually abandoned its performance before Shri Atam Das filed his nomination paper."

The two letters dated July 23, 1958 and August 13, 1958, clearly evince an intention on the part of the Government to determine the contract, and the demand for rectification of the defects did not evidence an intention either to keep the original contract outstanding or to enter into a fresh contract for carrying out the repairs in the work already executed. Even if insistence upon rectification of the defects be treated as an offer, and the willingness of the appellant to carry out the repairs be treated as acceptance of the offer, studied inaction for nearly six years by the appellant as well as by the Government in our judgment leads to an inference of abandonment. We accordingly agree with the finding recorded by the High Court on the second issue.

The appeal is allowed and the order passed by the High Court set aside. The respondent will pay the costs in the Trial Court as well as this Court including costs of the hearing for recording findings on the issues.

(Sd.) J. C. SHAH, J.

(Sd.) A. N. GROVER, J.

Dated, the March, 11, 1969.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No 1706 (NCE) of 1967

(Appeal under S. 116-A of the Representation of the People Act 1951 from the Judgment and Order dated the 23rd October 1967 of the Madhya Pradesh High Court (Indore Bench) at Indore in Election Petition No. 43 of 1967. Atamdas son of Jiwan Das Jatav, resident of Hem Singh-ki-Parade, Lashkar P.O. Lashkar, Gwalior—Appellant.

Versus

Suriya Prasad son of Shri Haimam, resident of 91, Khedapati Colony, P.O. Gwalior—Respondent.

Dated the 11th March 1969

CORAM:

The Hon'ble Mr. Justice J. C. Shah.

The Hon'ble Mr. Justice A. N. Grover.

For the Appellant—Mr. S. V. Gupte, Senior Advocate (M/s Rameshwar Nath and Mohinder Narain, Advocates with him).

For the Respondent—M/s G. N. Dikshit, R. N. Dikshit and D. Goburdhan, Advocates.

The Appeal above-mentioned being called on for hearing before this Court on the 17th and 18th days of February 1969 upon hearing Mr. S. V. Gupte Counsel for the Appellant and Mr. Gopinath Dikshit Counsel for the Respondent the Court took time to consider its Judgment and the appeal being called on for Judgment on the 11th day of March 1969 this Court in allowing the appeal doth order: (1) that the Judgment and order dated the 23rd October 1967 of the Madhya Pradesh High Court (Indore Bench) at Indore in Election Petition No. 43 of 1967 be and are hereby set aside and in place thereof an order dismissing the said Election Petition No. 43 of 1967 filed by the Respondent herein in the said High Court be and is hereby substituted; (2) that the Respondent herein do pay to the Appellant herein his costs of Election Petition No. 43 of

1967 incurred in the Madhya Pradesh (Indore Bench) at Indore and the costs of this appeal incurred in this Court as well as the costs of the hearing in the Madhya Pradesh High Court (Indore Bench) at Indore for recording findings on issues framed by this Court's Order dated the 20th March 1968; (3) that the costs of this appeal incurred in this Court by the Appellant herein be taxed by the Taxing Officer of this Court and this Court doth further order that this order be punctually observed and carried into execution by all concerned.

Witness the Hon'ble Mr. Mohammad Hidayatullah, Chief Justice of India at the Supreme Court, New Delhi this the 11th March 1969.

(Sd) M. P. SAXENA,
Deputy Registrar.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1706 (NCE) OF 1967

(Appeal under section 116A (A) of the Representation of the People Act 1951 from the Judgment and order dated the 23rd October, 1967 of the Madhya Pradesh High Court at Indore (Indore Bench) in Election Petition No. 43 of 1967).

Atamdas son of Jiwan Das Jatav, resident of Hem Singh-ki-Parade Lashkar P.O. Lashkar, Gwalior—Appellant.

Versus

Suriya Prasad son of Shri Hariram resident of 91, Khedapati Colony, P.O. Gwalior—Respondent.

Dated the 20th March, 1968

CORAM:

Hon'ble Mr. Justice J. C. Shah,

Hon'ble Mr. Justice G. K. Mitter.

For the Appellant—Mr. N. C. Chatterjee, Senior Advocate, (Mess Rameshwar Nath and Mohinder Narain Advocates with him).

For the Respondent—Mr. D. Goburdhan, Advocate.

The Appal above-mentioned being called on for hearing before this Court on the 7th day of March 1968 upon hearing Mr. N. C. Chatterjee, Counsel for the Appellant and Mr. D. Goburdhan Counsel for the Respondent the Court took time to consider its Judgment and the Appeal being called on for Judgment on the 20th day of March 1968 this court doth order (1) that the case be and is hereby remitted to the Madhya Pradesh High Court Indore Bench, Indore with the direction that the said High Court do record its findings after affording an opportunity to the parties herein to lead evidence on the following issues:

(a) Whether the work undertaken by the appellant under the contract dated February 25, 1954 had been completed before January 19, 1967, departmentally or through other contractors?

(b) If the work was not completed on January 19, 1967 has the project in respect of the incomplete work been abandoned?

(c) If the project was not abandoned, was it intended to get the same completed through the appellant under the terms of the contract dated February 25, 1954.

(2) That the said High Court shall take up the hearing of this case with the least practicable delay and record its findings on the three issues referred to in clause one supra within a period of one month from the date on which the said High Court enters upon the enquiry and shall submit the evidence together with its findings on the said three issues to this court and this court doth further order that this order be punctually observed and carried into execution by all concerned.

Witness the Hon'ble Mr. Mohammad Hidayatul'ah Chief Justice of India at the Supreme Court, New Delhi this the 20th day of March, 1968.

(Sd.) M. P. SAXENA,
Deputy Registrar.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1706 OF 1967

Atam Das—Appellant.

Versus

Suriya Prasad—Respondent.

JUDGMENT

Shah, J.

At the last general elections the appellant Atam Das was elected to the Lok Sabha from the Morena Reserved Constituency No. 1. The respondent filed an election petition challenging the election of the appellant on the ground that the latter was not qualified to stand as a candidate for election in that he had a subsisting contract for execution of works undertaken by him in the course of his business as a building contractor with the Central Government on the date on which the nomination paper was filed and when he was declared elected. The High Court of Madhya Pradesh upheld the contention and set aside the election.

The appellant is a building contractor and his name stood entered in the list of approved contractors of the Central Government. On February 25, 1954 the appellant entered into a contract for "repairing work of Ratnawali Burj Raisen Fort" with the Department of Archaeology, Government of India, at Bhopal. The total value of the contract was Rs. 37,012/-. The appellant deposited a sum of Rs. 1,850/- as security deposit for due performance of the contract. The work under the contract was not completed within the period of three months stipulated for completion. For the work done by the appellant till March 31, 1956, he was paid Rs. 27,656/9/-. The record is silent as to whether any work was done by the appellant in pursuance of the contract after March 31, 1956. In the petition it was averred in paragraph 9 that the contract of the appellant with the Central Government dated February 25, 1954 "subsists and exists at present". In reply the appellant denied the plea and asserted that he had not suffered any disqualification. The appellant stated before the Court that he did not execute any work in connection with Ratnawali Burj after he completed its work in 1956. The appellant admitted that no payment in addition to the payments made till March 31, 1956, was made, or that the account was otherwise settled. He admitted also that he had not completed the work within the stipulated period.

The High Court held that there was no evidence that the contract which was not completed by the appellant was abandoned by implied arrangement, or was discharged by any action on the part of the Central Government. The High Court in paragraph 33 of their judgment summarised the conclusions as follows:

".....it must be held that the (appellant) did not fully perform the contract in question (repairing work of 'Ratnawali Burj' Raisen Fort) entered into by him on 25th February, 1954 till today and that the same has not been terminated or discharged in any of the manners known to law. I, therefore, hold that the said contract subsisted on the date of the filing of the nomination paper on 19th January, 1967 and its scrutiny and also on 23rd February, 1967 when the election result of the constituency in question was declared. In fact, it subsists even today."

Correctness of that view is challenged in this appeal.

Section 7(b) of the Representation of the People Act, 1951, defines "disqualified" as meaning "disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State". A person is disqualified by s. 9A, from being a member of the Legislature so long as there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government. The appellant did enter into a contract on February 25, 1954 for "repairing work of Ratnawali Burj Raisen Fort" with the Central Government, and the work undertaken by him was not completed till March 31, 1956. But from that circumstance alone an inference does not arise that there subsisted a contract at the date of filing of the nomination paper of the appellant so as to disqualify him from being elected a member of the Parliament. The respondent however relies upon evidence documentary and oral in support of the plea that the contract dated February 25, 1954, remained subsisting till the relevant dates. On June 20, 1957, a

letter was addressed to the Director General of Archaeology in India, New Delhi, by the Superintendent of Archaeology, Central Circle, Bhopal, in which it was complained that the work undertaken by the appellant was incomplete and was found to be defective and in view of the adverse comments made by the Archaeological Engineer the work was discontinued and was still incomplete. On December 13, 1957, a circular was addressed by the Director General of Archaeology in India, New Delhi, to all Circle Superintendents in which it was stated in paragraph-5 that in view of certain circumstances stated therein, "from the next financial year all works will be executed departmentally except"—(i) original works when departmental staff are not readily available; (ii) supply of materials where necessary; and (iii) very exceptional cases of repairs to monuments, where the Director General is personally satisfied that it is in the interest of the Department that the work should be executed through contract. On July 23, 1957, the Director General of Archaeology in India, in a letter addressed to the Superintendent, Department of Archaeology, Central Circle, Bhopal, stated that "a joint inspection of the work of Atma Das, Contractor (appellant) at the Ratnawali Burj at Raisen in the company of Archaeological Engineer and yourself has led me to believe that the following course of action should be taken in the matter." In paragraphs 2 and 3 of the letter, which are important, it is stated:

2. The contractor should be told categorically that he is not to proceed with the work.
3. The remaining part of the work, which may include the heightening of the Burj by not more than 2 ft., filling up its interior and rendering its top watertight may be done by departmental labour."

The appellant wrote a letter to the Superintendent, Archaeological Department, on August 27, 1959 in reply to a letter dated August 11, 1959, that a part of the work entrusted to him had been done departmentally and that so far as the defects pointed out in the work done by him were concerned, the work was done in the presence of and according to the instructions given to him by the person authorised by the Department, and that a contractor who worked according to instructions would be in a position of difficulty when he was told afterwards that the work was defective when it was in truth "due to the defects of officials". He then stated,

"My work was all along been inspected and approved and after a long time it is being declared defective due to defects of the work done departmentally.

I want with all sincerity to finish the said work as early as possible but for doing it following essentials to be complied with:

On the record there is no correspondence after that letter which has a bearing on the completion of the contract or its discharge or abandonment. It is true that there is no completion certificate issued in favour of the appellant as it obviously could not be issued, and the security deposit has not been returned to the appellant. There is no admission by the appellant that he has done any work thereafter, nor is there any evidence on the record that the appellant was even called upon to complete the contract. The burden of proving the charge of disqualification or corrupt practice in an election dispute lies heavily upon the person who makes that charge, and the charge must be established by evidence which is beyond reasonable doubt.

K. M. Srivastava—the only witness who could have thrown some light on the further progress of the work—has been the least helpful. The witness was working as Deputy Superintendent, Archaeological Survey of India, at Bhopal since March 1, 1966. According to him the repairs of the old monuments were done by his Department and the work was being done departmentally since the issue of the Circular dated December 13, 1957. He deposed that he had brought the file relating to the "repairing work of Ratnawali Burj" and after referring to that file he stated that upto March 31, 1956, Rs. 27,656/9/- were paid to the appellant. In answer to the question whether the contract had been completed by the contractor, he replied: "I was not staying at Bhopal at the relevant time. However, there is a letter in file dated 28th June, 1957 Ext. P-5, which indicates that the work was not complete in 1957 till 30th June 1957, and it also says that the work carried out was defective. I do not know whether the work has been completed or not by now, because beyond this letter Ext. P-5 I know nothing about this contract." He further stated that the security deposit of the contractor is generally released after the completion of the work to the satisfaction of the Department and his record did not show that the security in connection with the contract had been released. He also did not know if any balance and how much was still due to or from the appellant.

A plea of disqualification under s. 9A requires proof that a contract was entered into by the candidate for election in the course of his trade or business with the appropriate Government, and the contract was subsisting at the time of nomination. The evidence on the record to prove that the contract dated February 25, 1954 was subsisting is inconclusive.

But the learned Judge of the High Court of Madhya Pradesh who tried the petition was of the view that in the absence of proof of discharge of contract for breach or abandonment, it must be inferred that the contract was subsisting. To enable us finally to decide this appeal, we are of opinion that there should be more definite evidence on that question. We direct that the record be sent down immediately to the High Court, and the High Court be directed to record findings on the following issues:

- (1) Whether the work undertaken by the appellant under the contract dated February 25, 1954, had been completed before January 19, 1967, departmentally or through other contractors?
- (2) If the work was not completed on January 19, 1967, has the project in respect of the incomplete work been abandoned?
- (3) If the project was not abandoned, was it intended to get the same completed through the appellant under the terms of the contract dated February 25, 1954?

Parties will be at liberty to lead evidence on these issues. The High Court will take up the hearing of this case with the least practicable delay and record findings thereon within a period of one month from the date on which the High Court enters upon the enquiry, and submit the evidence together with the findings on these issues to this Court.

(Sd.) J. C. SHAH, J.

(Sd.) O. K. MITTAL, J.

New Delhi,

Dated, March 20, 1968.

[No. 82/MP/43/67.]

New Delhi, the 8th May 1969

S.O. 2011.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950, the Election Commission of India in consultation with the Government of Bihar, hereby nominates Shri Prem Prasad Nayya, ex-officio Secretary to Government, Political (General and Transport) Department, as the Chief Electoral Officer for the State of Bihar from the date he takes over charge vice Shri Venkatesh Narain.

[No. 154/3/69.]

By Order,

K. S. RAJACOPALAN, Secy.

नई दिल्ली, 8 मई 1969

एस० ओ० 2012.—सोक प्रतिनिधित्व अधिनियम, 1950 की धारा 13-क की उपथारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग विहार सरकार के परामर्श से राजनीतिक (सामान्य तथा परिवहन) विभाग में सरकार के पदेन सचिव श्री प्रेम प्रसाद नथर, को श्री वेंकटेश नागर्यण के स्थान पर उनके कार्यभार ग्रहण करने की तारीख में विहार राज्य के लिए मुख्य निर्वाचन आक्सिसर के रूप में एतद्वारा नामनिर्देशित करता है।

[संख्या 154/3/68.]

आदेश से,

कै० एस० राजगोपालन, सचिव।

New Delhi, the 25th April 1969

S.O. 2013.—In pursuance of section 116C (2) (b) of the Representation of the People Act, 1951, the Election Commission hereby publishes the Judgment pronounced on the 8th April, 1969, by the Supreme Court of India, New Delhi, in Election Petition No. 10 of 1967.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1576 (NCE) OF 1968

Appeal under Section 110-A of the Representation of the People Act 1951 from the Judgment and Order dated the 16th April 1968 of the Madhya Pradesh High Court at Jabalpur in Election Petition No. 10 of 1967.

Shrimati Sahodrabai Rai, aged about 48 years, widow of Shri Murlidhar Rai, agriculturist, resident of village Karrapur, Tahsil and District Sagar, M.P.—*Appellant.*

Versus

1. Shri Ram Singh Aharwar aged about 27 years son of Shri Ganpat Lal Aharwar resident of Purbiyau Tori, Sagar, Tahsil and District Sagar M.P.

2. Shri Churaman, aged about 50 years, son of Shri Ramle, resident of Silar P.O. Deori, Tahsil Rahli, District Sagar, M.P.

3. Shri Sunder Lal, aged about 30 years, son of Bakkal, resident of Muhal No. 14, Sadai Bazar, Sagar, M.P.—*Respondents.*

CORAM:

Dated, 8th April 1969

The Hon'ble Mr. Justice J. C. Shah.

The Hon'ble Mr. Justice V. Ramaswami.

The Hon'ble Mr. Justice A. N. Grover.

For the Appellant.—Mr. G. N. Dikshit Advocate.

For Respondent.—Mr. P. Ram Reddy, Senior, Advocate M/s. S. S. Parekh and S. S. Khanduja, Advocates with him

The appeal above-mentioned being called on for hearing before this Court on the 23rd day of March 1969 upon hearing Mr. Gopinath Dikshit Counsel for the appellant Counsel for respondent No. 1 not being called upon to argue, respondents Nos. 2 and 3 not appearing either in person or by counsel though served and the appeal having been set down ex-parte as against the said respondents the Court took time to consider its judgment and the appeal being called on for judgment on the 8th day of April 1969. This Court Doth Order: (1) That the appeal above-mentioned be and it hereby dismissed (2) That there shall be no order as to costs of this appeal in this Court and this Court Doth Further Order that this ORDER be punctually observed and carried into execution by all concerned.

Witness the Hon'ble Mr. Mohammad Hidayatullah Chief Justice of India at the Supreme Court, New Delhi, this the 8th day of April 1969.

(Sd.) M. P. SAXENA.

Deputy Registrar.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1576 of 1968

Smt. Sahodrabai Rai

Appellant

Vs.

Ram Singh Aharwar and Ors

Respondents.

JUDGMENT

Shah.

The appellant and the three respondents were candidates at the elections held in February 1967 for a seat in the Lok Sabha from the Scheduled caste constituency No. 24, Sagar, in the State of Madhya Pradesh. The first respondent polled

1,12,943 votes and was declared elected, the appellant polled 1,12,646 votes. The appellant then filed a petition in the High Court of Madhya Pradesh for setting aside the election and for an order that she be declared elected.

The High Court by order dated September 21, 1967, held that the petition did not comply with the provisions of s. 81(3) of the Representation of the People Act, 1951. This Court in Civil Appeal No. 1698 of 1967 set aside the order of the High Court and remanded the case for trial on the merits. Evidence was then led before the High Court. The High Court again dismissed the petition. The appellant has appealed to this Court against that order.

The contentions urged in support of the appeal are—

- (1) that there was no fair trial of the petition because the Trial Judge had issued a notice requiring the appellant to show cause why she should not be committed for contempt of court for submitting an application to the Chief Justice of the High Court for transfer of the proceeding to another Judge for trial;
- (2) that the first respondent resorted to a corrupt practice in that the Jan Sangh party of which he was the accredited candidate got printed a pamphlet Ext. P/1 and the first respondent, his agents and workers circulated the pamphlet which made an appeal to the voters in the name of religion;
- (3) that the votes polled in favour of the appellant were wrongly rejected on the ground that instead of the seals in red ink they were found to bear seals in blue ink, and her application for recount was also unlawfully rejected; and
- (4) that the first respondent set afloat a false rumour that dacoits were likely to attack the village Hardwani within the constituency on the day of polling and on that account a large number of voters either did not go to the polling station or returned to their village without casting their votes.

These contentions may be considered *seriatim*.

After two witnesses were examined on her behalf, the appellant submitted an application to the Trial Judge, in which she stated that she desired to move the Chief Justice of the High Court for transfer of the case for trial to another Judge. This application was made by her without consulting the lawyers appearing on her behalf. Her lawyers made a statement before the Court that they did not approve the contents of the application and sought permission to withdraw from the case. The appellant then stated that she was unable to proceed with the examination of the witnesses and asked for an adjournment. The Court granted the adjournment and asked the appellant to arrange for examination of the witnesses on the date of the adjourned hearing. The learned trial Judge thereafter issued a notice upon the appellant requiring her to show cause why she should not be committed for contempt. On March 23, 1968, the appellant made a statement that she will not examine seven of the witnesses included in the list of witnesses and wanted to examine six of the remaining witnesses. The case stood adjourned till March 27, 1968. The trial then proceeded, the appellant having engaged the services of another counsel. The notice requiring the appellant to show cause why she should not be committed for contempt was discharged on April 5, 1968. The learned Judge observed that there was "little doubt that the application" made by the appellant on March 22, 1968, stating that she would move the Hon'ble the Chief Justice for getting the case transferred was "completely misconceived", as she must have known that such an application was incompetent, that the previous application was made by the appellant on account of a mistaken view, and that since by another application dated April 4, 1968, the appellant had tendered an unconditional apology to the Court, no further steps need be taken against her.

Counsel for the appellant contends that throughout the course of the proceeding in the High Court, because of the threat to commit her for contempt, the appellant was unable to lead evidence and was unable to examine all the witnesses who supported her case, and that the advocates appearing on her behalf withdrew from the case and she had to engage another advocate. The application for transfer of the proceeding from the Judge to whom the case was allotted was without doubt misconceived, but it would have been more consistent with the dignity of the Court to ignore that application made by a litigant who was practically illiterate. We do not however think that there is any ground for holding that the

appellant was unable to prosecute her election petition. There is no reason to think that she declined to examine seven witnesses because of the pendency of the notice to take proceedings in contempt. The appellant was able immediately to secure the services of another lawyer and the proceeding was conducted without the appellant being deterred in any manner by the pendency of the proceeding for taking contempt proceedings against her. We do not think that any ground is made out for setting aside the Judgment of the High Court on this ground.

It is the case of the appellant that the Jan Sangh party had published a pamphlet Ext P/1, and the first respondent, his agents and workers distributed the pamphlet amongst the voters. The pamphlet Ext. P/1, reads as follows:

"Beware Decentron Beware

Dreadful and astounding attack on your religious sentiments.

An impression showing a pair of bullocks being slaughtered by a sword.

*During the 19 years of Congress Rule, 24 crores of cows, bullocks, calves and sacred bulls have been killed.

*Even on this day 30,000 animals of the cow species are being slaughtered in the sacred land of Bharat.

*In Madhya Pradesh thousand of bullocks are being killed every day.

*The Congress wants to continue slaughtering of bullocks.

Help physically, financially and heartily to seek banning of cow-slaughter.

Note—Your vote should only go to those who are honest, lovers of Indian culture and devotees of cow.

SARVADALIYA GORAKSIIA MAHABIYAN SAMITI, BRANCH DEORI KALAN.

The High Court was of the view that there was no evidence to prove that the pamphlet was printed at the instance of the Jan Sangh party. In the pamphlet it is stated that it was published at the instance of "Sarvadahya Goraksha Mahabiyan Samiti, Branch Deori Kalan". The High Court also held that there was no evidence to prove that the first respondent or his agents and workers distributed the pamphlet. The High Court further held that in any event the pamphlet could not be said to amount to a corrupt practice within the meaning of s. 123 of the Act. It is unnecessary for us to consider the evidence in support of the case of the appellant that the Jan Sangh party was responsible for publication of the pamphlet and that the first respondent or his agents and workers had distributed copies of the pamphlet among the voters, for, it has been held by this court in *Pandit Shreekrishna Setal v. Ramcharan Puneri*⁽¹⁾ in respect of a pamphlet which was in terms identical with the pamphlet Ext. P/1, that the printing and circulation of the pamphlet did not amount to committing a corrupt practice within the meaning of s. 123(2)(a)(ii) of the Representation of the People Act, 1951. Having regard to this judgment, counsel for the appellant has conceded that he is unable to substantiate his case that any corrupt practice was committed even assuming that the pamphlet was printed at the instance of the Jan Sangh party and distribution of the pamphlet Ext P/1 by the first respondent or his agents and workers proved.

The third contention has no merit either. The appellant contended that at certain polling stations votes were rejected because after the stock of red ink supplied to the officers at those polling stations was exhausted, in the seals on the ballot papers, instead of red ink blue ink was used. The appellant also claimed that whereas the ballot papers in her favour were rejected because the seal markings were made in blue ink, other ballot papers bearing similar markings in favour of the first respondent were accepted. At the time of counting, the ballot papers with blue ink seals were, it appears, kept apart, but later on the direction of the Returning Officer all those ballot papers were accepted. No objection was raised at the time of counting about any discrimination. But two applications were submitted thereafter by Gaura Singh Rai on behalf of the appellant. In the first application it was stated that 10615 ballot papers were wrongly rejected and those several ballot papers, if accepted, would have gone to swell the votes in favour of the appellant. It was therefore requested that a recount of the rejected ballot papers may be ordered. In the second application it was stated that the blue ink ballot papers which had been rejected in the counting of votes of the Bina Legislative Assembly constituency within Sagar Lok Sabha Reserve

⁽¹⁾ C.A. No 978 of 1968, decided on January 21, 1969.

Constituency may be included in the recount. Besides in the "Khurai Legislative Assembly Constituency many ballot papers had been rejected unnecessarily": therefore, the rejected ballot papers of Khurai and Bina constituencies may also be included in the recount. The Returning Officer passed a reasoned order rejecting the applications for recount. He observed that he had asked the applicant to give specific grounds for rechecking the rejected ballot papers or for a recount, but the only ground submitted was that "a very large number of ballot papers were rejected as invalid, and they may be re-scrutinised or recounted". The Returning Officer then observed that before the counting was taken up, it was explained to all the candidates, their election agents and the counting agents present in the premises to bring to his notice specifically any instance of rejection of a ballot paper by the Counting Supervisors, or the Assistant Returning Officers who were entrusted with the scrutiny of the ballot papers, if they were not convinced about the decision taken by them; that the appellant was present on both the days of counting and practically throughout the duration of counting and was moving about in the premises, but neither she, nor her counting agent Ganga Singh Rai, brought to his notice a single instance of improper rejection of any ballot paper by the Counting Supervisors or by the Assistant Returning Officer; that full facilities and opportunities were given to the candidates, but no complaint was made; and since all opportunities were given, no case was made out for reviewing the position and that no case was made out for re-scrutiny or re-counting of the ballot papers at that stage.

Evidence was led at the trial by the appellant, Ganga Singh Rai her counting agent, and Dr. Ishwardass the Returning Officer was examined on behalf of the Returning Officer. The Returning officer said that there was not a single ballot paper which was rejected on the ground that blue ink instead of red ink was used in the seals. He admitted that in the rejected ballot papers there were found some ballot papers which had the mark of seal in blue ink, but the rejection of such ballot papers was not on the ground that seal was in blue ink but on other grounds. It is admitted by the appellant that she had appointed three counting agents and that she was also personally present at the time of counting of the votes. Neither the appellant nor her counting agents raised any objection at the time when the counting of votes took place. The High Court regarded the evidence of Dr. Ishwardass as reliable, and on a review of the evidence held that it did not establish that any valid votes of the appellant were improperly rejected or that there was any discrimination practised in the counting.

An application was made before the High Court for ordering inspection of the ballot papers. The High Court directed that the application may be considered later when the last witness of the appellant was examined. By the final order the High Court recorded the grounds for rejecting the application for inspection. The High Court was of the view that no case was made out for ordering inspection or a recount. After carefully considering the evidence of the appellant, Ganga Singh Rai and Dr. Ishwardass Returning Officer, we do not think that there is any ground for holding that votes were rejected on the ground that blue ink instead of red ink was used in the seals on the ballot papers, or that there was any discriminatory treatment between the appellant and the first respondent in the counting of votes.

Counsel for the appellant contended that in an election petition, arising in respect of the same constituency, to set aside the election of a successful candidate to the Madhya Pradesh Legislative Assembly, the Returning Officer had directed a partial recount, and this Court directed a general scrutiny of the rejected votes, and the same procedure may be adopted in the present case also. In *Rajaju v. Brij Kishore Pateri and Others* (2) this Court directed that the votes rejected at the counting at the election be scrutinised under the supervision of the Deputy Registrar of this Court. It does not, however, appear that in that case it was because of the use of the blue ink instead of red ink. In that case, the Returning Officer did order a recount, but after a partial recount was made, the recount had been abandoned. We thought it necessary in appeal against the order of the High Court dismissing the election petition to call for the rejected ballot papers and to scrutinize them. But that is not a ground for holding that the same procedure should be adopted in the present case.

(2) C.A. No. 1181, of 1968, decided on February 25, 1969.

There was clear evidence before the High Court indicating that no ballot paper was rejected on the ground that different ink was used, and the conduct of the appellant and her agent is consistent with that view.

We may turn to the last contention. It was the case of the appellant that one Uttamchand Jain a Jan Sangh worker had spread a false rumour that in the village Hardwani on the polling day dacoits were going to take advantage of the absence of voters from their homes and to commit dacoities and to set fire to their houses, and that as a result of this rumour some voters in the constituency returned without casting their votes and others did not at all go to the polling station, because of the apprehension that dacoits may attack the village in their absence. Uttamchand Jain died after the polling day but before the trial of the election petition. It is true that information was received at the Banda Police Station by the Station House Officer about the rumour of a dacoity at Hardwani. The Station House Officer has deposed that soon after the report was received, he was asked by the Deputy Superintendent of Police to reach Hardwani village. He found that "the rumour was based in a mistaken view as some of the members of the Special Armed Force who had reached the village Hardwani on the date of election were taken by mistake to be the dacoits". He deposed that he made enquiries, but he was unable to ascertain the name of the person responsible for spreading the rumour. There is on the record no clear evidence that Uttamchand Jain was a supporter of Jan Sangh party, nor that he was a worker for the appellant. There is also no reliable evidence that Uttamchand Jain had sown the rumour. The case of the appellant was supported by her testimony which was purely hearsay and the testimony of her witness, Prabhudayal Tiwari, P.M. 17, which also suffered from serious infirmity. The evidence was also conflicting and the High Court declined to place any reliance upon the evidence. No serious arguments have been raised before us which would justify us in taking a different view.

The appeal fails and is dismissed. Having regard to all the circumstances of the case, we direct that there will be no order as to costs in this Court.

(Sd.) J. C. SHAH, J.

(Sd.) A. N. GROVER, J.

(Sd.) V. RAMASWAMI, J.

New Delhi; April 8, 1969.

[No. 22, MP/10/67.]

New Delhi, the 13th May 1969

S.O. 2014.—In pursuance of clause (b) of sub-section (2) of section 116C of the Representation of the People Act, 1951, the Election Commission hereby publishes the judgment pronounced on the 1st April, 1969, by the Supreme Court of India in Civil Appeal No. 1566N(E) of 1968 filed by Shri Jugal Kishore Sinha against the judgment of the High Court of Judicature at Patna, dated the 3rd May, 1968, in election petition No. 23 of 1967.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1566 (NCE) of 1968

Appeal under Section 116-A of the Representation of the People Act 1951 from the Judgment and Order dated the 3rd May 1968 of the Patna High Court in Election Petition No. 23 of 1967.

Thakur Jugal Kishore Sinha son of Shri Sadhu Saran Singh, resident of Village Dumeri Kala, P. S. Majorganj, District Muzaffarpur—Appellant.

Vs.

1. Shri Nagendra Prasad Yadav, resident of village Chak Mahila, P. S. Sitamarhi, District Muzaffarpur.
2. Shri Jai Kishore Narain Singh, Village and P.O. Bhasar Mochha, P. S. Sitamarhi, District Muzaffarpur.
3. Shri Bhagwan Rao, resident of Mohalla Kot Bazar, Sitamarhi, District Muzaffarpur.

4. Shri Satyanarain Prasad, Mehalla Shankar Chowk Sitamarhi, District Muzaffarpur.
5. Shri Satyanarain Sharma, Village and P.O. Sharwara, Via Barharwa, Distt. Muzaffarpur.
6. Shrimati Diweshwari Devi, w/o. Shri Alokik Baba, resident of Hajipur, Distt. Muzaffarpur—*Respondents*.

Dated the 1st April, 1969

CORAM:

The Hon'ble Mr. Justice V. Ramaswami.

The Hon'ble Mr. Justice A. N. Grover.

For the Appellant—M/s. B. P. Singh and D. N. Misra, Advocates.

For the Respondent No. 1—Mr. D. Goburdhan, Advocate.

THE APPEAL above-mentioned being called on for hearing before this court on the 21st day of March 1969 UPON hearing Mr. B. P. Singh Counsel for the Appellant and Mr. D. Goburdhan Counsel for Respondent No. 1 Respondents Nos. 2 to 6 not appearing either in person or by Counsel though served and the appeal having been set down *ex-parte* as against the said Respondents the Court took time to consider its Judgment and the appeal being called on for judgment on the 1st day of April 1969 THIS COURT DOTH ORDER

(Seal)

SUPREME COURT

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1566 (NCE) of 1968

No. or 196

Th. Jugal Kishore Sinha—*Appellant*

Versus

Nagendra Prasad Yadav and Ors—*Respondent*.

PATNA HIGH COURT ELECTION PETITION NO. 23 OF 1967
ORDER DISMISSING THE APPEAL WITH COSTS

Dated this the 1st April 1969

SHRI B. P. SINGH

Advocate for on record for the Appellant.

SHRI D. GOBURDHAN,

Advocate for on record for the Respondent No. 1.

(1) That the Appeal above-mentioned be and is hereby dismissed

(2) That the Appellant herein do pay to Respondent No. 1 herein his costs of this appeal incurred in this Court (3) THAT the costs of this appeal incurred by Respondent No. 1 herein in this Court be taxed by the Taxing Officer of this Court AND THIS COURT DOTII FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned

Witness the Hon'ble Mr. Mohammad Hidayatullah, Chief Justice of India at the Supreme Court, New Delhi this the 1st day of April, 1969.

(Sd.) M. P. SAXENA, Dy. Registrar.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1566 OF 1968

Thakur Jugal Kishore Sinha

Appellant

Versus

Nagendra Prasad Yadav and Ors.

Respondents

JUDGMENT

Ramaswami, J.—The appellant filed an election petition in the Patna High Court for setting aside the election of respondent No. 1 to the Lok Sabha from Sitamarhi constituency on the following grounds:—

- (1) that there were irregularities in the counting of votes by which validly marked ballot papers in favour of the appellant were improperly rejected and invalid ballot papers marked either of respondent No. 1 or other respondents were counted as valid votes of respondent No. 1; and
- (2) the respondent No. 1 got a false pamphlet defaming the appellant printed and distributed himself and got distributed through his workers at different localities.

The respondent No. 1 entered appearance and controverted the allegations made by the appellant.

The parliamentary constituency comprised of six assembly constituencies as follows:

- (i) Sitamarhi Assembly constituency No. 67.
- (ii) Bathanaha Assembly constituency No. 68.
- (iii) Sheohar Assembly constituency No. 70.
- (iv) Majorganj Assembly constituency No. 71.
- (v) Sonbarsa Assembly constituency No. 72; and
- (vi) Sursand Assembly constituency No. 73.

The dates of poll in the different Assembly constituencies were as follows:—

	Date of Poll	Name of Assembly
17-2-1967	• • • • •	Sheohar
19-2-1967	• • • • •	Sursand and Sitamarhi
21-2-1967	• • • • •	Majorganj, Sonbarsa and Bathanaha

Besides, there was repoll on 23rd February, 1967 at booth Nos. 16 and 43 of Bathanaha Assembly constituency.

The counting of ballot papers was held in Sitamarhi Court premises on three dates as follows:—

	Date of Counting	Assembly Constituency
23-2-1967	• • • • •	Sursand
24-2-1967	• • • • •	Sheohar
24-2-1967	• • • • •	Majorganj
25-2-1967	• • • • •	Sitamarhi
25-2-1967	• • • • •	Sonbarsa
25-2-1967	• • • • •	Bathanaha

On 26th February, 1967 the postal ballots, which were four in number, were counted and on the same day the results of the election were declared by the Returning Officer, who was the District Magistrate of Muzaffarpur. It was announced that the different candidates had secured the following number of votes:-

(i) Thakur Jugal Kishore Sinha (Petitioner)	1,40,820	Votes
(ii) Shri Nigandra Prasad Yadav (Respondent No. 1)	1,41,337	„
(iii) Shri Jai Kishore Narain Singh (Respondent No. 2)	34,004	„
(iv) Shri Bhagwan sao (Respondent No. 3)	31,469	„
(v) Shri Satyanarain Prasad (Respondent No. 4)	12,740	„
(vi) Shri Satyanarain Sharma (Respondent No. 5)	4,918	„

Accordingly respondent No. 1 who was found to have secured the majority of valid votes, was declared to have been elected. Immediately thereafter the appellant who had lost the election by a margin of 517 votes filed a petition for recount of the ballot papers but the petition for recount was rejected.

In the course of the trial a petition was filed by the appellant for inspection of the ballot papers. But by his order dated the 23rd April, 1968 the trial Judge rejected the petition.

Substantially two issues arose for determination in the case: (1) whether the results of the election in so far as it concerns the returned candidates have been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, and whether the petitioner has received the majority of valid votes; and (2) whether respondent No. 1 or any other person with his consent or any of his agents other than his election agent, acting in his interest, committed a corrupt practice within the meaning of sub-s. (4) of section 183 of the Representation of the People Act, 1961 which states:

"The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election".

Both issues were decided against the appellant by the trial Judge and the election petition was dismissed on 3rd May, 1968.

In support of this appeal it was contended in the first place that the trial Judge was not justified in refusing to grant inspection of the ballot papers. It was said that 21 witnesses were examined on behalf of the appellant to prove the irregularities alleged in the election petition. But the oral evidence was rejected by the trial Judge on the ground that no document was produced by the appellant to corroborate the oral evidence. The trial Judge has pointed out that in the absence of any contemporaneous document it was inconceivable that the witnesses should have retained in their memory the serial numbers of booths in respect of which they claimed to have seen particular categories of irregularities. In his petition Exhibit No. 3 to the Assistant Returning Officer the grievance of the appellant was that on account of insufficient light and the continuance of counting till late hours, his counting agents could not attend to the counting properly as they were also feeling sleepy. It was, therefore, improbable that the counting agents of the appellant could have noticed such large scale irregularities as alleged and should have retained these irregularities in their memory till the time of drawing up of the election petition. Some of the witnesses like P.W. 5 and P.W. 11 said that they had prepared notes of the irregularities. P.W. 11 also said that he had filed a petition on the 23rd February, 1967 to the Assistant Returning Officer describing the various irregularities noted in the course of counting. But no steps were taken by the appellant to get the alleged petition of P.W. 11 dated the 23rd February, 1967 proved on his behalf in the course of the trial. Similarly P.W. 12 claimed that he had handed over a rough note of the alleged irregularities to the appellant and the appellant also filed a petition before the Returning Officer on the 24th February, 1967 incorporating specific details of the irregularities in the counting of ballot papers. P.W. 18 also gave

similar evidence. But the evidence of P.W. 11 and P.W. 12 is not consistent with the evidence of the appellant himself. Another witness P.W. 23 claimed that he had filed not less than six protest petitions before the Assistant Returning Officer at the stage of counting on the 23rd, 24th and 25th February, 1967. But none of these petitions was proved on behalf of the appellant. Written petitions were also claimed to have been filed by P.Ws. 1, 2, 7, 9, 15 and 17 with alleged copies of some of them made as enclosures A, B, C and D to the election petition. But none of them has been exhibited in the case. Several witnesses claimed that they had informed the appellant about the various categories of irregularities in the matter of counting of ballot papers. It is not possible to rely upon this evidence because in the petition, Exhibits 2 and 3 dated the 26th February, 1967 and 25th February, 1967 made to the Returning Officer, the appellant had not mentioned details of the irregularities. If the evidence of witnesses was true the appellant would not have omitted to mention in the petition, Exhibit 2, all or most of the particulars which he has mentioned in sub-paragraphs (a) to (h) of paragraph 27 of the election petition. The trial Judge was, therefore, not impressed with the oral evidence of the witnesses examined by the appellant on this part of the case and we see no reason to take a different view.

We proceed to consider the next question arising in this appeal, namely, whether the offending pamphlet was published by or on behalf of respondent No. 1 by distributing its copies at the various places mentioned in Schedule VI of the election petition. Eight witnesses were examined by the appellant in support of his case on this point. They are P.Ws. 1, 17, 19, 24 to 28. P.W. 1 has spoken of the distribution at Piprahi, Barharwa and Bairgania. P.Ws. 17 and 25 gave evidence about the distribution at Parihar. P.Ws. 19, 24, 26, 27 and 28 have spoken about the distribution at Ranjitpur, Akhta, Riga Bazar, Majorganj and Sitamarhi bus stand respectively. No evidence has been adduced to prove the distribution at Sursand or at Domra. It is important to notice that the witnesses have been drawn from three different lists. P.Ws. 1 and 17 belong to the first list of 57 witnesses which appellant filed on 21st November, 1967; P.W. 9 belongs to the second list of 12 witnesses filed on the 28th February, 1968 and P.Ws. 24 to 28 belong to the third list of 14 witnesses filed on the 8th April, 1968. The appellant came out with the third list after 22 out of his 29 witnesses had given their evidence. It is obvious that little reliance can be placed on the evidence of the witnesses figuring in the second and third lists.

It is true that P.Ws. 1 and 17 appeared in the first list of witnesses filed on the 21st November, 1967. P.W. 1 deposed about the distribution of copies of the offending pamphlet at three different centres Bairgania, Piprahi and Barharwa. In his examination in chief P.W. 1 stated that he had seen the pamphlets being distributed among voters by Surandra Prasad Yadav, Yogendra Prasad, Ram Narain Rai Yadav and two clerks of Sitamarhi Cane Growers' Co-operative Union. But the evidence of P.W. 1 is not consistent with the case set out by the appellant in Schedule VI according to which distribution is alleged to have been made at Barharwa by Chandrshwar Yadav of village Chak Mahla whom P.W. 1 has not named. Admittedly P.W. 1 never made a report to any governmental authority with regard to the distribution of the defamatory pamphlet. The other witnesses, P.W. 17 said that on the 18th February, 1967 he had seen Yogendra Rai Yadav distributing the offending pamphlet in Parihar Bazar. P.W. 17 is a resident of a village about 25 miles from Parihar. He too conceded that he had made no report to any public authority about the distribution of the offending pamphlet. Again the circumstance that P.W. 29 took no action in connection with the alleged distribution of pamphlet at any time before the filing of the election petition shows that none of his workers had actually seen it being distributed anywhere. The trial Judge found that the witness examined by the appellant on this aspect of the case were wholly unreliable. We see no reason to differ from the estimate of the evidence made by the trial Judge.

For these reasons we hold that the judgment of the High Court dated the 3rd May, 1968 is correct and this appeal is dismissed with costs.

April 1, 1969.

(Sd.) V. RAMASWAMI, J.

(Sd.) R. N. GROVER, J.

[No. 82/BR/23/67.]

New Delhi, the 21st May 1969

S.O. 2015.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950, the Election Commission, in consultation with the Government of Pondicherry, hereby nominates Shri Ch-Ramakrishna Rao, Law Secretary to the Government of Pondicherry, as the Chief Electoral Officer for the Union Territory of Pondicherry from the date he takes over charge and until further orders *vice* Shri G. Gopalakrishnan.

[No. 154/21/68.]

By Order,

A. N. SEN, Secy.

New Delhi, the 19th May 1969

S.O. 2016.—In exercise of the powers conferred by sub-section (1) of Section 22 of the Representation of the People Act, 1951, the Election Commission hereby cancels its notification No. 434/MD/68 dated the 30th November, 1968.

[No. 434/MD/68.]

By Order,

V. NAGASUBRAMANIAN, Under Secy.

नई दिल्ली, 19 मई, 1969

एस० ओ० 2017.—रोक प्रतिनिवित्र अधिनियम, 1951 की धारा 22 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्वित्र आयोग आयोग अधिसूचना मंत्रा 434/तमिलनाडु/68 दिनांक 30 नवम्बर, 1968 एाद्यारा रद्द करता है।

[मंत्रा 434/तमिलनाडु/68]

आदेश से,

बी० नागसुब्रामण्यन, प्रब्रर सचिव ।

MINISTRY OF HOME AFFAIRS

New Delhi, the 21st May 1969

S.O. 2018.—In exercise of the powers conferred by clause (2) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Authentication (Orders and other Instruments) Rules, 1958, published with the notification of the Government of India in the Ministry of Home Affairs, No. S.O. 2297, dated the 3rd November, 1958, namely:—

1. (1) These rules may be called the Authentication (Orders and other Instruments) Second Amendment Rules, 1969.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 2 of the Authentication (Orders and other Instruments) Rules, 1958, in clause (c), after the words "the Director of Personnel, National Cadet Corps," the following shall be inserted, namely:—

"and, in regard to grant of Commissions to individual officers, their retirement or release or termination of their Commission,—

(i) in the Army, Military Secretary, Deputy Military Secretary, or Assistant Military Secretary,

(ii) in the Navy, Director of Personnel Services, Deputy Director of Personnel Services, or Assistant Director of Personnel Services, and

(iii) in the Air Force, Director of Personnel (Officers), Deputy Director of Personnel (Officers) or Assistant Director of Personnel (Officers)."

[No. 3/3/69 Pub.I.]

K. R. PRABHU, Jt. Secy.

DELHI DEVELOPMENT AUTHORITY

New Delhi, the 20th May 1969

S.O. 2019.—In pursuance of the provisions of sub-section (4) of section 22 of the Delhi Development Act, 1957, the Delhi Development Authority has replaced at the disposal of the Central Government the land described in the schedule below for placing it at the disposal of the Land and Development Officer, Ministry of Works, Housing and Supply, Government of India, New Delhi for further transfer to Anandpur Trust Society Delhi for Religious purposes, with effect from 22nd February, 1966 the date of handing over the possession.

SCHEDULE

Piece of land measuring 721-22 sq yds. bearing Khasra Nos. 201/169/36 situated in Ahata Kidara Estate.

The above piece of land is bounded as follows:—

NORTH : Qabristan (Grave Yard).

SOUTH : Pucca Road.

EAST : Nazul Land.

WEST : M. M. Road, Qabristan.

[No. S2(45)55.]

M. L. MONGIA, Secy.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE : PATNA

CENTRAL EXCISES

Patna, the 8th April, 1969

S.O. 2020.—In exercise of the powers conferred upon me under Rules 15 and 16 of the Central Excise Rules, 1944, and in supersession of the Notification No. 3-Tob/64 dt. 10-12-64, I hereby notify that no declaration will be necessary under the said rules in respect of unmanufactured tobacco grown in the areas not exceeding 12 Ares and cured in quantities not exceeding 60 Kgs., as specified in Columns 2 and 3 of the subjoined schedule.

The Notification will have effect from the tobacco crop-year 1968-69.

ANNEAUX

Sl. No.	Name of the Revenue District	Area declared exempted
1	2	3
1	Patna	The whole of the District.
2	Shahabad	Do.
3	Gaya	Do.
4	Ranchi	Do.
5	Hazaribagh	Do.
6	Dhanbad	Do.
7	Singhbhum	Do.
8	Palamu	Do.
9	Bhagalpur	Whole of the District EXCEPT village Babhangawan.

Sl. No.	Name of the Revenue District	Area declared exempted
1	2	3
10	Srithal Pargana	Whole of the District.
11	Monghyr	The whole of the following Police Stations of the District— 1. Monghyr. 2. Jamalpur. 3. Surajgarh. 4. Monghyr Mufassil. 5. Kharagpur. 6. Tarapur. 7. Lakhisarai. 8. Burhesc. 9. Shekhpura. 10. Barbigha. 11. Jhajha. 12. Chakai. 13. Simultala. 14. Jamui. 15. Sikandra. 16. Lakhimpur. 17. Gogri. 18. Parbatta. 19. Chautham. 20. Khajauria. 21. Bakhari—Except village Siswanikothi. 22. Ballia. Except villages (a) Moughalsarai and (b) Raghunathpur } 23. Cheria Bariarpur, Except villages (a) Manjhau (b) Tara Bariarpur. 24. Alandi, Except villages (a) Haripur (b) Jagia (c) Baridinraha (d) Chhoti Simraha. 25. Si-nri Bakhtiarpur, except villages (a) Paharpur (b) Tilathi (c) Majhwa (d) Rasoolpur. 26. Bekdapur, Except villages (a) Kajari (b) Lalpur (c) Tarha (d) Parasmoni] (e) Beldaur (f) Kurban (g) Balaitha and (h) Tharihia 27. Teghra, Except villages (i) Baro (j) Hasanpur and (k) Barauni] 12 Purnea The whole of the following police Stations of the District 1. Balrampur 2. Barsol 3. Kadwa 4. Azamnagar.

Sl. No.	Name of the Revenue District	Area declared exempted
1	2	3

22. Purnea—*co. utd.*

5. Paisi
6. Sikt
7. Terhigach
8. Kechnodaman
9. Jagbani
10. Narpitgarj
11. Araria
12. Joki
13. Amaur
14. Purnea Sadar
15. Marihari
16. Bahitala
17. Anditala
18. Dumaria village of Dhamdana P.S.
19. Futkauli of Rupauli P.S.
20. Kabaiya of Rupauli P.S.
21. Piran Kar of Rupauli P.S.
22. Birania of Rupauli P.S.
23. Bani gara of Rupauli P.S.
24. Kusana of Rupauli P.S.
25. Sondip of Rupauli P.S.
26. Askatis of Rupauli P.S.
27. Sheikhpura Millik of Rupauli P.S.
28. Bhaldaha Basa of Rupauli Police Station.
29. Teliari of Rupauli P.S.
30. Jabey of Rupauli P.S.
31. Satni of Rupauli P.S.
32. Bisaria of Rupauli P.S.
33. Brahmgarj of Rupauli P.S.
34. Pandit Basa of Rupauli P.S.
35. Rampur Parihat of Rupauli P.S.
36. Teldiha of Rupauli P.S.
37. Mateli of Rupauli P.S.
38. Lakhnaur of Rupauli P.S.
39. Hardi Kol of Rupauli P.S.
40. Basantpur of Rupauli P.S.
41. Kolagachi of Dighal Bai k P.S.
42. Dogiya of Do.
43. Talgachi of Do.
44. Patnergatti of Do.
45. Dubutola of Do.
46. Dubu of Do.
47. Kalopi of Do.
48. Bengiola of Do.
49. Mirch Bhitta of Do.
50. Laxmi pur (Jamun-tola) of Do.
51. Sari Dahit hat of Do.
52. Khunitola of Do.
53. Dargah Kanchanbari Do.
54. Baluadangi of Do.
55. Palsa of Do.
56. Dakupara of Do.
57. Ghailaduba of Do.
58. Sir ghkari of Do.
59. Fauzdar Palsa of Do.
60. Kherabari of Do.
61. Baijnath Palsa of Do.
62. Kharkharia of Do.
63. Tikniguri of Do.
64. Hasnabad of Do.
65. Jagirpatti of Do.
66. Pacce Murhi of Do.
67. Dahi hat Kela Do.
68. Daalibhat khas Do.

Sl. No.	Name of the Revenue District	Area declared exempted
1	2	3
12	Purnea—contd.	
69.	Dargah Basti ((Dahibhat) of Dighal Bank P.S.	
70.	Khurri Basti (Khurc) of Dighal Bank P.S.	
71.	Bachra Basti of Dighal Bank P.S.	
72.	Tulsia gyantola of Dighal Barak P.S.	
73.	Rangdani of Dighal Bank P.S.	
74.	M istafaganj of Dighal Bank P.S.	
75.	Gommara of Dighal Bank P.S.	
76.	Aliganj of Dighal Bank P.S.	
77.	Bhurbheri of Dighal Bank P.S.	
78.	Kalmari of Dighal Bank P.S.	
79.	Daria of Forbesganj P.S.	
80.	Thirha of Do.	
81.	Bara of Do.	
82.	Manikpur of Do.	
83.	Bardana of Do.	
84.	Simrana of Do.	
85.	Aurahi of Do.	
86.	Saini Aurani of Do.	
87.	Mir Ganj of Do.	
88.	M zapur of Do.	
89.	M'rzapur Scarpatti of Do.	
90.	Mahua Gopalpur of Do.	
91.	Rangdana of Do.	
92.	Babi Pothia Do.	
93.	Ramai of Do.	
94.	Khawaspur of Do.	
95.	Gurni of Do.	
96.	Bairgachi of Kishanganj P.S.	
97.	Simalpuri of Do.	
98.	Gothira of Thakurganj P.S.	
99.	Kharibasti of Do.	
100.	Bhiagachi of Do.	
101.	Gindhingola of Do.	
102.	Khanki of Do.	
103.	Belbari of Do.	
104.	Bhakshalbhitta of Do.	
105.	Lemugari of Do.	
106.	Hathi Jora of Do.	
107.	Dholkitta of Do.	
108.	Kalughat of Do.	
109.	Dengizachi of Thakurganj P. S.	
110.	Goringhritta of Do.	
111.	Binabari of Do.	
112.	Khatkharti of Do.	
113.	Bakshar of Pothia P.S.	
114.	A'ubbari of Do.	
115.	Taibpur of Do.	
116.	Nazirpur of Do.	
117.	Halki band of Do.	
118.	Koabesi of Do.	
119.	Ammabari of Do.	
120.	Dangibasti of Thakurganj P. S.	
121.	Chengmari of Do.	
122.	Jamuniagaj of Do.	
123.	Tabalritta of Do.	
124.	Jhata of Do.	
125.	Bhadrutti of Do.	
126.	Karidangi of Do.	
127.	Patamari of Do.	
128.	Dighali of Do.	

Sl. No.	Name of Revenue District	Area declared exempted
1	2	3
12	Purnia— <i>contd.</i>	
	129. Manker of	Do.
	130. Bajhandoi	Do.
	131. Dangendor of	Do.
	132. Mal Basti	Do.
	133. Siallangi of	Do.
	134. Chauraligari of	Do.
	135. Piparisthan of	Do.
	136. Kalkurdanga of	Do.
	137. Balubari of	Do.
	138. Kimartoli of	Do.
	139. Gangabari of pothia P.S.	
	140. Chhochhagi of	Do.
	141. Machhuabari of	Do.
	142. Barsohagi of	Do.
	143. Kadangachh of	Do.
	144. Satulpur of	Do.
	145. Babhanbasti of	Do.
	146. Lonargara of	Do.
	147. Paharhatta of	Do.
	148. Panasi of	Do.
	149. Ghior Gaon of	Pothia P. S.
	150. Pattalhasha	Do.
	151. Ramariapokhar	Do.
	152. Mungibhitta of	Thakurganj P. S.
	153. Kakermari	Do.
	154. Hultiuli	Do.
	155. Kondabhitta	Do.
	156. Tulsibhitta	Do.
	157. Kusiar of Pothia	P. S.
	158. Jinglabhitta	Thakurganj P.S.
	159. Jogitola	Do.
13	Sharsa	The whole of the following Police stations :
		1. Madhepura P. S.
		2. Sonebarsa Raj P. S.
		3. Bangaon
		4. Singhara West and the following villages of Ude-
		kishanganj P. S.
	1.	Kusthan
	2.	Raniganj
	3.	Pararia
	4.	Gamail
	5.	Devail
	6.	Jogiraj
	7.	Madhukchand
	8.	Motichek
	9.	Rahi Jagatpur.
	10.	Josadil
	11.	Baghra
	12.	Majora.
	13.	Karama
	14.	Singa:
	15.	Mohanpur
	16.	Goalpara
	17.	Araighat
	18.	Lakhanpur
	19.	Jhanjhari
	20.	Baluahi
	21.	Madheli
	22.	Berahi.

Sl. No.	Name of Revenue District	Area declared exempted
1	2	3
13	Saharsa— <i>contd.</i>	23. Madhuban 24. Jhalari 25. Gangora 26. Kishanganj 27. Binigarha 28. Ujjaini 29. Singarpur 30. Karanti
14	Darbhanga	The whole of the following Police Stations : 1. Lauka 2. Hurlakhi 3. Madhwapur 4. Ladania 5. Berauli 6. Bahera 7. Madhubeni 8. Benipatti 9. Jhanjharpur 10. Phulpur 11. Jalley 12. Rosera P. S. excepting the following villages : 1. Belahi 2. Dudhpura 3. Pithadobi 4. Birha 13. Singhia P. S., Except the following villages : 1. Jarauna 2. Bharain 3. Dudhpuria 4. Phuis 5. Satha 6. Baghimara 7. Pai 8. New Toli 8. Girawra 9. Sagrain 10. Bhaikhera 11. Baruni 12. Fina 13. Salha Fina 14. Mehsat. 15. Bujhama. 16. Musahi. 17. Nom-Beg. 14. The following villages of Darbhanga Sader P. S. : 1. Lalganj 2. Poriadih. 3. Panchobh. 4. Harcianda. 5. Baghla. 6. Madhopura. 7. Nayatola. 8. Rajwara. 9. Auliabad. 10. Perichaka. 11. Pokhar Bhinda. 12. Pator. 13. Deokuli.

Sl. No.	Name of Revenue District.	Area declared exempted.
---------	---------------------------	-------------------------

1

2

3

14 Darbhanga—*contd.*

14. Sahora.
15. Debipur.
16. Haralpatti.
17. Gharari.
18. Maksudpur.
19. Rustampur.
20. Bishanpur.
21. Hanuman Nagar of Singhwara P. S.
22. Rampura of Do.
23. Thakania.
24. Kansi.
25. Singhwara.
26. Kataса.
27. Harpur Shyam of Warisnagar P. S.
28. Masina of Do.
29. Jahangirpur (Kothia) Do.
30. Madhuban Do.
31. Somna Do.
32. Dhadh Do.
33. Sibsingpur Do.
34. Sobhan Do.
35. Sobhan Bargaon Do.
36. Sobhan Basant. Do.
37. Bhore Jairam. Do.
38. Bhore Shahpur Do.
39. Tehra Milki Do.
40. Gudar Ghat Do.
41. Tengraha Do.
42. Sripur Gahar Do.
43. Batar Toli Do.
44. Ashopur Do.
45. Govindpore Do.
46. Sadukha Do.
47. Fatehpore Do.
48. Gumla Do.
49. Balipore of Warisnagar P. S.
50. Kapoor Patti Do.
51. Nagar Basti Do.
52. Kishanpur Bakunth Do.
53. Navtal Do.
54. Muzari Do.
55. Koila Kund Do.
56. Beghumpore Do.
57. Mushepore Do.
58. Kheri Do.
59. Dadpatti of Naugachia P. S.
60. Madaria Do.
61. Baika Do.
62. Thengha Do.
63. Tatuar Do.
64. Phulwari Do.
65. Mahiara of Baheri PS
66. Susari of Baheri P.S.
67. Thathopur Do.
68. Kumbar Ranjit Do.
69. Belhi Do.
70. Bakmandam Do.
71. Katrahi Do.

Sl. No.	Name of Revenue District	Area declared exempted	
1	2	3	
14	Darbhanga—contd.	15. The following Station : 72. Mahia 73. Tatuar 74. Bulwara 75. Dad Path 76. M'daria 77. Taddi	villages of Manigachi Police
78.	Muzaffarpur	The whole of the following Police Stations 1. Sonbarsa 2. Sursand 3. Sitamarhi 4. Belsund 5. Majorganj 6. Bargania 7. Pupri 8. Katra 9. Runi Saidpur 10. Shohar 11. Bela 12. Minapore 13. Baruraj	Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do.
16.	Champaran	The whole of the following Police Stations 1. Sugauli 2. Patahi 3. Raxaul 4. Adapore 5. Chasahan 6. Dhaka 7. Govindganj	Do. Do. Do. Do. Do. Do. Do.
17.	Saran	The whole of the following Police Stations of the District. 1. Manjhi 2. Siswan 3. Darauli 4. Siwan 5. Maiwa 6. Guthani 7. Raghunathpur 8. Ander 9. Ekma 10. Bhora 11. Katia 12. Kurchai Kot 13. Mirgaj 14. Basanpur 15. Mushtekh 16. Marhowrah 17. Baikunthpur 18. Chapra Town 19. Bhagwan Bazar 20. Gorkha 21. Soncpur 22. Parsa	The whole of Bettiah Sub Division.

Patna, the 17th April 1969

S. O. 2021.—The expression "12 (twelve) Areas" used in Notification No. 1-Tob 69/dated 8th April, 1969 (Central Excise) should be substituted by the expression "6 (Six) Ares".

[No. 2, Tob/69]

TILAK RAJ, Collector.

BOMBAY CENTRAL EXCISE COLLECTORATE

CENTRAL EXCISES

Bombay, the 16th April 1969

S.O. 2022.—In exercise of the powers conferred on me under Rule 173G(4) of the Central Excise Rules, 1944, I hereby prescribe that in respect of the excisable commodities mentioned in column No. 3 of the list appended to this Notification the raw material account should be maintained in respect of the principal raw materials shown against each in column No. 4 of the list. Each assessee governed by the Self Removal Procedure shall maintain from 1st April, 1969, the account of the principal raw materials in the form already prescribed under this Collectorate Notification Central Excise No. CER/173G(4)/1/1968, dated the 31st May, 1968.

2. The assessees governed by the Self Removal Procedure shall also furnish the quarterly return in form R.T.5 prescribed under Rule 55 of the Central Excise Rules, 1944, in respect of the relevant principal raw materials shown in the list appended.

List of excisable commodities under Self Removal Procedure and names of their principal raw materials for maintenance of accounts and furnishing of returns.

S. No.	Tariff Item No. (1)	Description (2)	Names of Important Raw materials (4)
		(3)	
1	1	Sugar.	Sugar cane and/or Beetroot
2	1A	Confectionery	Sugar
3	3	Tea	Green Leaf
4	4 II	Cigars and Cheroots.	Unmanufactured Tobacco
5	12	Vegetable non-essential Oils.	(i) Oil seeds (ii) Oil Cake for Extraction plants. (iii) Unprocessed V.N.F. Oil for processing plants.
6	13	Vegetable Products.	V.N.E. Oil.
7	14A	Soda Ash	Common salt.
8	14B	Caustic Soda	Common Salt.
9	14 BB	Sodium Silicate	Soda Ash.
10	14C	Glycerine	(i) Soap spent lye and/or sweet water Lye.
11	14 DD	Synthetic Organic Products.	Chemical Compounds/compound having the optical bleaching property, such as sodium salt of Benzoyl Diamino Stilbene-Disulphonic Acid.
12	14 G	Sulphuric Acid	Sulphur and/or Pyrites.
13	14 H	Carbonic Acid Gas (Carbon Dioxide)	(i) Coke, or (ii) Light Diesel Oil or (iii) any other materials containing carbonates used for CO ₂ production.
14	15	Soap.	V. N. E. Oil or other fats including Oil and/or soap stock.
15	15AA	Surface Active Agents.	The chemical compounded which is a Surface Active Agent.

16	15B	Cellophane . . .	Woodpulp.
17	16A	Rubber Products for Latex Foam Sponge.	Rubber Latex.
18	18	Rayon and Synthetic fibre and yarn.	<ol style="list-style-type: none"> 1. Stable Fibre Raw material of Cellulosic origin Wood pulp. 2. Viscos yarn Wood pulp 3. Yarn spun O.I of staple cellulosic fibre & staple fibre. 4. Nylon con ircus Caprol Caprolactam. 5. Tarene staple fibre. 6. Terere continuous filament. 7. Cellulose Acetate yarn Wood pulp or Ethyl Alcohol 8. Acrylic Fibre Acryl Nitrate
19	18 B	Woolen yarn (a) worsted (b) Others	<ol style="list-style-type: none"> 1. Wool to for worsted woollen yarn 2. Raw Wool for others 3. Old Woollen Fabrics etc. for shoddy wool
20	21	Woollen Fabrics	<ol style="list-style-type: none"> 1. Woollen yarn or 2. Grey fabrics (for processing units.) 1. Yarn and /or 2. Grey Fabrics (for processing units).
21	22	Rayon or Art Silk Fabrics	
22	22 B.	Textile Fabrics Impregnated.	Fabrics.
23	23	Cement	(i) Limestone & (ii) Gypsum
24	23	Asbestos Cement Products.	(i) Portland Cement &(ii) Asbestos.
25	25	Iron in any crude form	Iron ore.
26	26	Steel ingots	Iron ore and/or steel scrap.
27	26-A	Copper and Copper Alloys.	<ol style="list-style-type: none"> 1. Copper ingote, or copper scrap or copper ore. 2. Gullies, (for rolling mills).
28	26AA	Iron & Steel Products.	<ol style="list-style-type: none"> 1. Steel ingots or 2. Sem-finished steel or 3. Scrap 4. For pipes-plates or sheets or skelp or strips or flats or billets.
29	26B	Zinc. . . .	<ol style="list-style-type: none"> 1. Zinc ore or 2. Ingots and bars, or 3. Plates and sheets.
30	27	Aluminium	<ol style="list-style-type: none"> 1. Bauxite or 2. Ingots and Bars or 3. Scrap, or 4. Alumirium dross.
31	27A	Lead. . . .	<ol style="list-style-type: none"> 1. Ore and/or (ii) scrap
32	28	Tin plates and Tinned sheets.	Plates or sheets or strips
33	29	Internal combustion Engines	(a) Block Castins or (b) Crank cases or (c) Nozzle holders and fuel pumps.
34	29A	Refrigerating and Air Conditioning Appliances and Machinery.	<ol style="list-style-type: none"> 1. Refrigerators compressors-Air conditioners. 2. Compressors compressors- Block or rotor and stators 3. Condensers and Copper tubing 4. Thermostats power element.

1	2	3	4
35	39	Electric Motors.	1. Bearings
36	31	Electric Batteries and parts thereof	2. Stampng for manufacture of stators only.
		1. Storage Batteries	Containers
		2. Dry Batteries	Zinc or aluminium rods or pellets or containe ^s
		3. Plates	Lead ingots or scrap Lead ingots or scrap
		4. Containers and covers.	Lead rubber sheets
17	32	Electric Lighting Bulbs and Fluorescent lighting Tubes.	
		(i) Bulbs	
		(ii) Fluorescent Tubes	Glass Shells.
		Glass tube shells	
		(iii) Miniature bulbs	Metal caps
38	33	Electric Fans	Electric Motor
39	33A	Wireless receiving sets	(a) Valves or transisters and (b) Gang condensors.
40	34	(i) Motor Vehicles excluding tractors.	(1) Engine Blocks
		(ii) Tractors.	(2) I.C. Engines.
41	37A	Gramophones	Motor.
42	38	Matches.	Potassium Chlorate
43	39	Mechanical Lighters.	Body of lighters.

[No. CER/173G(4)/1/69.]

A. K. ROY, Collector.

**OFFICE OF THE DEPUTY COLLECTOR, CUSTOMS & CENTRAL EXCISE,
AMRITSAR**

Amritsar, the 24th April 1969

Amendment to Notification issued under Rule 15 & 16 of Central Excise Rules, 1944 under C. No. V(4)DC/30/8CE/68/Pt.II/28041-74, dated 30-10-68 by the Dy. Collector, Customs and Central Excise, Amritsar

S.O. 2023.—In exercise of the powers conferred upon me under rule 15 & 16 of the C.E. Rules, 1944, I hereby make the following amendment in the notification, dated 30th October, 1968, issued under C. No. V(4)DC/30/8CE/68/Pt.II/28041-74, dated 30th October, 1968.

For the words "All villages except Moonsa, Bhopani, Kherikhasdar, Mubarakpur, Nagaon, Surati, Chhar, Kuroda, Jharli, Badli and Dadri" Occuring in Column 7 against Tehsil Jhajjar of Distt. Rohtak in Gurgaon Circle in the aforesaid notification, the following should be substituted, namely; "All Villages except Moonsa, Bhopani, Kherikhasdar Mubarakpur, Nagaon, Surati, Chhar, Kuroda, Jharli, Badli, Dadri, Badsa and Rudia was".

[C. No. V(4)DC/30/8CE/68/Pt.II.]

N. N. ROY CHOUDHURY, Dy. Collector.

THE MADRAS CENTRAL EXCISE COLLECTORATE, MADRAS

CENTRAL EXCISES

Madras, the 7th May 1969

S.O. 2024.—In exercise of the powers vested under Rule 233 of the Central Excise Rules, 1944, I hereby direct that the manufacturers of Electric Motors

enjoying the rebate under the Government of India Notification No. 68/60-CE, dated 20th April, 1960, shall hereafter furnish the total quantity of HP of electric motors cleared by them on the reverse of each gate pass commencing from the first day of each month so as to check the rebate enjoyed on the first 100 HP and on the next 100 HP in the following manner.

(a) HP of motors removed previously in the month	HP
(b) HP of motors removed now under the Gate Pass	HP
(c) Total of HP of motors removed	HP

In addition, the manufacturers of Electric Motors shall furnish a certificate in the RT-12 Return rendered by them as indicated below:—

“Certified that the output of my/our factory has not exceeded 300 HP of Electric Motors in any one of the 12 months preceding the month in which the goods covered by this return have been cleared”.

[C. No. V(30)3/7/66-CX.I.]

A. R. SHANMUGAM, Collector.

THE MYSORE CENTRAL EXCISE COLLECTORATE: BANGALORE

CUSTOMS

Mysore the 7th May, 1969

S.O.2025 In exercise of the powers conferred by Sub-Section 2 of Section 2 of the Customs Act, 1962 (52 of 1962), the Collector of Central Excise, having been appointed as Collector of Customs, within the jurisdiction of the Mysore Central Excise Collectorate, hereby assigns to the Officers mentioned in column 1 of the Table below the functions of the “Principal Officer” referred to in the various Sections of the Customs Act, 1962 given in the corresponding entry in column 2 of the table.

TABLE

I

2

Assistant Collectors of Customs and Central Excise 129(2).

Superintendent of C. Ex., Mangalore/Karwar Circle. 21, 22(3)(a), 22(3)(b), 27(3), 28(1), 45(3), 59(3), 61, 63(2), 64, 67, 68, 72(1), 72(2), 73, 129(1) & 142(1)(a).

Superintendent of C. Ex., Mangalore Port.

17(3), 17(4), 18, 19, 21, 22(3)(a), 22(3)(b), 27(3), 28(1), 31, 32, 39, 41(3), 42, 45(3) and (b), 47, 48, 51, 54(1), 54(3), 59(3) 60, 61, 62, 63(2), 64, 67, 68, 69, 72(1) 72(2), 73, 85, 86(2), 89, 97, 129(1), 129(2) 142(1)(a), 144(1) and 149.

Inspectors and Sub-Inspectors of C. Excise i/c of the outport, viz., Malpe, Coondapur, Hargarkatta, Baird, Majall, Sadashivagad, Karwar, Binga, Chedia, Belikeri, Ankola, Gangavali, Tadri, Kumta, Honnavar, Manki, Murdeshwar, Shirali, and Bharkal.

17(1), 17(3), 17(4), 18, 19, 30(1), 31, 32, 34, 37, 38, 39, 41(1), 41(3), 42, 45(2) & (b), 46, 47, 50(1), 51, 54(1), 54(3) 60, 62, 68, 69, 77, 79(1), 80, 85, 86(2) 89, 92(1), 97, 144(1), 145 and 149.

Inspectors of Central Excise, Posted to Mangalore Port.

17(1), 30(1), 34, 37, 38, 41(1), 46(1), 50(1) 51, 54(1), 77, 79(1), 80 & 144(1).

Sub-Inspectors Posted to Mangalore Port, Karwar and Coondapur.

37, 38.

[No. VIII/48/9/68-Cus.]
M. C. DAS, Collector.

CENTRAL EXCISE DIVISION: LUCKNOW
SHOW CAUSE NOTICE

Lucknow, the 15th May, 1969

To whom it may concern

S.O. 2026.—Whereas cloves and Milk powder referred to in the allegation enumerated in the enclosed Annexure appears to be liable to confiscation under section III of the Customs Act, 1962.

And whereas the owner concerned in view of the allegations contained in the said Annexure appears to be liable to penalty under section 112 of the Customs Act, 1962.

Now, therefore, the owner concerned is hereby required to explain the matter and show cause to the Assistant Collector of Central Excise, Lucknow in writing within one month of the date of issue of this notice why the seized goods should not be confiscated under section III(d) of the Customs Act, 1962 and why he should not be penalized under section 112(b) of the same Act.

The owner concerned should produce at the time of showing cause all the evidence upon which he intends to rely in support of his defence. He should also indicate in the written explanation whether he wishes to be heard in person before the case is adjudicated.

If no cause is shown against the action proposed to be taken within one month of the issue of this notice or the owner concerned does not appear before the adjudicating officer when the case is posted for hearing the case will be decided *ex parte* on its merits.

ANNEXURE

On receipt of a secret information, the Preventive Inspectors of Central Excise Lucknow went to the N.E. Railway station, Charbagh, Lucknow on 24th March, 1969 and got opened one parcel comprising of one case and bundles in the presence of two independent witnesses. From the said parcel, 21 kgs. of cloves contained in three bundles and 3,500 kgs. of milk powder contained in two packets were recovered. The cloves and the milk powder were seized by the officers of Central Excise in the reasonable belief that they have been brought into India in contravention of the section III of the Customs Act, 1962 and Import Trade Regulation, as there was no claimant for the same who could produce proof of their legal import into India.

The import of seized goods is prohibited (except under a licence) under section 3 of the Import and export (Control) Act, 1947 as read with clause 3 of the Import (Control) Orders, 1955.

The aforesaid prohibition has been in force for a large number of years and the policy of issuing licences has been extremely restricted.

The seized goods are dutiable also.

[No. C. 163-VIII(Cus)(15) Seiz/69/7205.]

(Sd.) Illegible,

Assistant Collector Central Excise Lucknow:

OFFICE OF THE DEPUTY COLLECTOR, CENTRAL EXCISE & LAND CUSTOMS, JAIPUR

CORRIGENDUM

Jaipur, the 17th April 1969

S.O. 2027.—In Notification issued under this office endorsement C. No. V(4)DC/30/1/68/III/23752-83, dated 6th December, 1968, in respect of Ajmer Division, at page 6 against Shahpura Sector, in Col. 6 S. No. 3 the name of village Nangal Charla may be read as NANGAL CHECHEKA.

[C. No. V(4)30/1/Int/68/II.]

A. SHANKAR, Dy. Collector.

**MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE
AND CO. AFFAIRS**

(Department of Industrial Development)

ORDER

New Delhi, the 16th May 1969

S.O. 2028.—In exercise of the powers conferred by section 5 of the Industries (Development & Regulation) Act, 1951 read with rule 8 of the Central Advisory Council (Procedural) Rules, 1952, the Central Government hereby appoints Shri R. P. Goenka to be member of the Central Advisory Council of Industries till the 3rd November, 1969, in place of Shri S. K. Ghosh, and directs that the following amendment shall be made in the Order of the Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) No. S.O. 4044 dated the 4th November, 1967, as amended by No. S.O. 463 dated the 17th January, 1968 and No. S.O. 3600/MDRA/5 dated the 21st September, 1968, namely:—

In the said Order, for entry No. 26, relating to Shri S. K. Ghosh, the following entry shall be substituted:—

“26. Shri R. P. Goenka, Chairman, Indian Jute Mills Association, Royal Exchange, 6, Netaji Subhas Road, Calcutta-1.”

[No. 1(5)Lic.Pol /67.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)

(Indian Standards Institution)

New Delhi, the 9th May 1969

S.O. 2029.—In partial modification of the then Ministry of Industry (Indian Standards Institution) notification No. S.O. 1281, dated 3rd April, 1964 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated 11th April, 1964, the Indian Standards Institution hereby notifies that the marking fee per unit for Cement concrete pipes has been revised. The revised rate of marking fee, details of which are given, in the Schedule hereto annexed shall come into force with effect from 1st February, 1969:

THE SCHEDULE

Product/Class of Product	No. and Title of Relevant Indian Standard	Unit	Marking fee per unit	
(1)	(2)	(3)	(4)	(5)
1. Cement concrete pipes (with and without reinforcement)	IS:458-1961 Specification for concrete pipes (with and without reinforcement)	Ore Metric Tonne	50 paise	

[No. CMD/13:10.]

S.O. 2030.—In supersession of the then Ministry of Commerce and Industry (Indian Standards Institution) Notification No. S.O. 602, dated 10th April, 1958 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated 26th April, 1958, the Indian Standards Institution hereby notifies that the Standard Mark for Central Concrete pipes has been revised. The revised design of the Standard Mark together with the title of the relevant Indian Standard and verbatim description of the design is given in the Schedule hereto annexed.

This Standard Marks for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the Rules and Regulations framed thereunder, shall come into force with effect from 1st February, 1969.

THE SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and Title of the Relevant Indian Standard	Verbal description of the design of the Standard Mark
(1)	(2)	(3)	(4)	(5)
1	IS: 4581	Cement concrete pipes (with and without reinforcement)	IS: 458-1961 Specification for concrete pipes (with and without reinforcement)	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in column (2), the number designation of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.

[No. CMD/13 : 9.]

New Delhi, the 20th May 1969

S.O. 2031.—In pursuance of sub-rule (1) of rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955 the Indian Standards Institution (Certification Marks) design(s) of which together with the verbal description of the design(s) and the title(s) of the relevant Indian Standard(s) are given in the Schedule hereto are hereby specified.

These Standard Mark(s) for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the Rules and Regulations framed thereunder, shall come into force with effect from the dates shown against each :

THE SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and Title of the Relevant Indian Standard	Verbal description of the Design of the Standard Mark	Date of Effect
(1)	(2)	(3)	(4)	(5)	(6)
1	IS: 739	Aluminium alloy wires	IS:739-1966 Specification for wrought aluminium and aluminium alloys, wire (for general engineering purposes) (Revised)	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col. (2), the number designation of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.	16 May 1969
2	IS: 2509	Rigid (PVC) non-metallic conduits	IS:2509-1963 Specification for rigid non-metallic conduits for electrical installations.	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col. (2), the number designation of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.	1 May 1969

1 2 3 4 5 6

3 IS: 3390	 Sphygmomanometer, mercurial	IS:3390-1964 Specification for sphygmomanometer, mercurial	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col. (2), the number designation of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.	1 May 1969	
4 IS: 3976	 TOE-CAP	Steel toe-caps for miners' leather safety boots and shoes	IS:3976-1967 Specification for safety rubber-canvas boots for miners	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col. (2), the number designation of the Indian Standard being superscribed on the top side and the words TOE-CAP being subscripted under the bottom side of the monogram as indicated in the design.	1 May 1969

[No. CMD/13:9]

New Delhi, the 21st May 1969

S.O. 2032.—In pursuance of sub-regulation (1) of Regulation 5 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the Indian Standards, particulars of which are mentioned in the Schedule given hereafter, have been cancelled :

THE SCHEDULE

Sl. No.	No. and Title of the Indian Standard cancelled	No. and Date of Gazette Notification in which Establishment of the Indian Standard was Notified
(1)	(2)	(3)
1	IS:445-1964 Specification for water hose of rubber, high pressure with woven reinforcement.	S. O. 2134 dated 18 June 1965 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 3 July 1965.
2	IS:912-1963 Specification for braided air hose of rubber, light duty.	S.O. 3025 dated 8 October 1963 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 26 October 1963.
3	IS:914-1963 Specification for braided water hose of rubber, low pressure.	S.O. 3025 dated 8 October 1963 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 26 October, 1963.

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2

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4. IS:953-1960 Specification for small form
crutch receiver. S.O. 2011 dated 17 August 1961 published
in the Gazette of India, Part II, Section 3
Sub-section (ii) dated 26 August, 1961

[No. CMD/13:7].

A. K. GUPTA,
Deputy Director General

MINISTRY OF FOREIGN TRADE AND SUPPLY

New Delhi, the 20th May 1969

S.O. 2033.—The Government of Jammu and Kashmir having nominated Shri Bazle Karim, Managing Director, J. & K. Industries Ltd., Srinagar, to be a member of the Central Silk Board under clause (h) of sub-section (3) of section 4 of the Central Silk Board Act, 1948 (61 of 1948) in place of Dr. Mir Habibullah, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Commerce No. 1272 dated the 10th April, 1967, namely:—

In the said notification, for the entry against serial number 18, the following entry shall be substituted, namely:—

“18. Shri Bazle Karim, Managing Director, J. & K. Industries Ltd., Srinagar.”

[No. F. 22/1/67-Tex(F).]

DAULAT RAM, Under Secy.

(Office of the Chief Controller and Exports)

New Delhi, the 22nd March 1969

S.O. 2034.—M/s. Greaves Cotton & Co., Ltd., New Delhi were granted an import licence No. G/DG/2105845/D/IT/25/C/H/21-24 dated 12th June, 1957 for Rs. 2,20,47,545/- They have applied for a duplicate copy of the licence (Customs purposes copy) on the ground that the original (Customs purposes copy) licence has been lost. It is further stated that the original licence was registered with the Customs House at Bombay and partly utilised. In support of this contention the applicant has filed an affidavit. I am satisfied that the original customs copy of the licence No. G/DG/2105845/D/IT/25/C/H/21-24 dated 12th June, 1957 has been lost and a duplicate licence should be issued to the applicant.

In exercise of the powers conferred by clause 9 (cc) of the Imports (Control) Order No 17/55 dated 7th December, 1955 as amended from time to time, the undersigned cancels the import licence No. G/DG/2105845/D/IT/25/C/H/21-24 dated 12th June, 1957 for Rs. 2,20,47,515/- (Customs purpose copy partly utilised) for the import of Dual channel radar type ATCR/2/D, etc. under S. No. 46/II of the I.T.C. Schedule issued in favour of M/s. Greaves Cotton & Co. Ltd., New Delhi.

[No. 11. G/Cont/66 67/GLS.]

S. A. SESHAN, Dy. Chief Controller.

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 14th May 1969

S.O. 2035.—M/s. The Fertilizers and Chemicals, Travancore Ltd., Udyogamandal, were granted licence No P/D/2167200, dated 22nd January, 1969, from G.C.A. under 4th I.D.A. Credit for the import of spares valued Rs. 23,00,000. They have requested for the issue of duplicate Exchange and Customs copies of the said licence, on the ground that the original copies of the licence have been lost in transit from New Delhi to Udyogamandal, without utilising it. The licence has not been registered with any Customs.

1. In support of their contention, the applicant have filed an affidavit. The undersigned is satisfied that the original copies of the licence referred to above i.e. P/D/2167200, dated 22nd January, 1969, have been lost and directs that duplicate copies of the licence in question should be issued to them. The original copies are cancelled.

2. The duplicate copies of the licence are being issued separately.

[No. CH/F. 4(9)/A.M. 69/R.M. 3/477.]

T. M. B. NEDUNGADI,
Jt. Chief Controller of Imports and Exports.

MINISTRY OF COMMERCE

(Office of the Jt. Chief Controller of Imports and Exports)

Central Licensing Area

ORDER

New Delhi, the 31st March 1969

S.O. 2036.—M/s. Everest Pharmaceutical Works, Bhatinda, were granted import licence No. P/SS/1608450/C/XX/25/C-D/25-26 dated 8th November 1967 for Rs. 50,000/- for the import of Drugs and Medicines as per list attached with the said licence. They have applied for issue of duplicate copy of the Customs Purpose copy thereof, on the ground that it has been lost/misplaced. This licence has been registered with Bombay Customs House, and has been utilised for Rs. 22,493.92 P.

2. The applicant have filed an affidavit in support of their contention, as required under para. 299 read with appendix 8 of I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied, the original Custom Purpose copy has been lost/misplaced.

3. In exercise of the powers conferred on me, under Section 9(CC) Import (Control) Order, 1955, dated 7th December 1955, I order the cancellation of the Customs purpose copy of import licence No. P/SS/1608450/C/XX/25/C-D/25-26 dated the 8th November, 1967.

4. The applicant is now being issued a duplicate copy of Customs Purpose copy of this licence, in accordance with the provision of para. 299 of I.T.C. Hand Book of Rules and Procedure, 1968.

[No. F.P. 46/AM-68/All-PB/CLA.]

RAM MURTI SHARMA,
Joint Chief Controller of Imports and Exports.

MINISTRY OF TRANSPORT & SHIPPING

(Directorate General of Shipping)

ORDER

Bombay, the 8th May 1969

S.O. 2037.—In pursuance of note (3) of the schedule to the notification of the Government of India in the Ministry of Transport and Shipping relating to scales of provision for seamen, No. S.O. 2169, dated 21st June, 1967 and in furtherance of the order of the Director General of Shipping, No. 9(21)-CRA/67, dated the 12th November, 1968, I, K. C. Madappa, Director General of Shipping, hereby order that, for a period of one month with effect from the 12th May, 1969, the total daily scale of cereal rations of 570 grams shall stand amended to 350 grams rice and 170 grams wheat, if procurement is made in India.

As a compensation for the reduction of 50 grams in the rice rations, the scale of other items shall be increased per day as under for each unit of 25 grams:—

10 grams of fresh fish, or

5 grams of meat, or

50 grams of dry vegetables, or

25 grams of fresh vegetables.

[No. 9(21)-CRA/67.]

K. C. MADAPPA,
Director General of Shipping.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 8th May 1969

S.O 2038.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the South Govindpur Colliery of Shri H. I. Pathak, Post Office Katrasgarh, District Dhanbad, and their workmen, which was received by the Central Government on the 13th April, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO 3) AT DHANBAD

REFERENCE NO. 45 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L., Presiding Officer.

PARTIES:

Employers in relation to the South Govindpur Colliery

Vs.

Their workmen.

APPEARANCES:

For Employers—Shri S. S. Mukherjee, Advocate.

For Workmen—Shri Shanker Bose, Secretary, Colliery Mazdoor Sangh.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, dated the 1st of April, 1969

AWARD

1. The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the South Govindpur Colliery of Shri H. I. Pathak Post Office-Katrasgarh, District Dhanbad, and their workmen by its order No. 2/135/66-LRII dated the 23rd of September, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 in respect of the matter specified in the schedule annexed thereto. The schedule is extracted below:—

SCHEDULE

“Whether the action of the management of the South Govindpur Colliery of Shri H. I. Pathak in refusing employment to Shri Budheshwar Gosai, Pump Khalasi, with effect from the 20th December, 1965 was justified? If not, to what relief is the workman entitled?”

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 137 of 1966 on its file. While it was pending there the proceeding was transferred to the Central Government Industrial Tribunal No. 7 Dhanbad by the Central Government by its order No. 8/25/67-LRII dated the 8th of May, 1967 where it was registered as reference No. 174 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 18th of August, 1968 transferred the dispute to this tribunal and here it has been re-numbered as reference No. 45 of 1968.

3. The Secretary, Colliery Mazdoor Sangh filed the written statement on 25th July 1968 on behalf of the workman. Their case is that Sri Budheshwar Gosai, the concerned workman has been working at the South Govindpur Colliery as a permanent Pump Khalasi since long time and that on 20th December, 1965 when Sr. Budheshwar Gosai reported for work as usual at the Schedule time, the management refused to provide him employment. No reason for this refusal to work was assigned by the management either verbally or in writing. According to the union when the concerned workman was stopped from work sufficient work for a pump khalasi was available in the colliery and persons junior to him were retained in service and subsequently even new hand were recruited to work as Pump Khalasi.

4. The management of South Govindpur colliery had committed several violations with regard to the payment of Wages Act, Mines Act and the Industrial Disputes Act. The workmen of the colliery had been for several months past, agitating for payment of wages in terms of Majumdar Award and other benefits according to the provisions of the Coal Mines Bonus Scheme. With a view to realising their demands the workmen united under the banner of the colliery Mazdoor Sangh. The concerned workman Sri Budheshwar Gosai was a very active member of the union. According to the union the management's refusal to allow the workman to continue in his emp'oyment was unjustified, *malafide* and illegal and amounts to victimisation and unfair labour practice.

5. The employers filed the written statement on 19th January 1968. Their case is that the concerned workman Sri Budheshwar Gosai was a temporary Pump Khalasi and during the period of his service he was very irregular in his attendance. Sri Budheshwar Gosai was allowed the duties of Pump Khalasi in the pit which was being sunk. He joined in the week ending 23rd January 1965 and continued till 18th December 1965. Sri Budheshwar Gosai absented without permission or any information after 18th December 1965. The management did not refuse employment to Sri Budheshwar Gosai, Pump Khalasi with effect from the 20th of December, 1965 or any subsequent date. Therefore, Sri Budheshwar Gosai is not entitled to any relief and that at present Sri Budheshwar Gosai, Pump Khalasi is working in other collieries.

6. On behalf of the emp'over Sri V. H. Thaker, was examined as a witness (MW-1) and one item of document was marked on behalf of the management i.e. the attendance chart of the concerned workman, Sri Budheshwar Gosai for the year 1965 (M-1). No witness was examined on behalf of the union nor they filed any document. MW-1 Sri V. H. Thaker, who is the manager of South Govindpur Colliery since year 1960, has stated on oath that the concerned workman Sri Budheshwar Gosai was not coming to work since 20th December 1965 voluntarily. He further stated that after 20th December 1965 he has been working in New Binidih Colliery and thereafter he joined Maraphari. Therefore, according to his statement the management did not refuse employment to Sri Budheshwar Gosai with effect from the 20th December, 1965 but on the other hand Sri Budheshwar Gosai himself absented from work since 20th December 1965 on his own accord. He further stated that he has no knowledge that Sri Budheshwar Gosai was a member of Colliery Mazdoor Sangh or of any union and that he was not aware of any union activity of Budheshwar Gosai. He further stated that it was not a fact that he stopped Sri Budheshwar Gosai with effect from 20th December 1965 from work.

6. The allegations made in the written statement were not proved by the union. The employers have filed ext M-1, the attendance chart for the year 1965 which shows that in that year Sri Budheshwar Gosai worked only for 161 days. The management has examined his witness Sri V. H. Thaker, who has proved the case of the management. He has stated on oath that the concerned workman was not stopped from work from 20th December 1965 and that the action of the management was not motivated by victimisation or unfair labour practice.

7. I therefore, hold that the management of South Govindpur Colliery did not refuse employment of Sri Budheshwar Gosai, Pump Khalasi and that he absented on his own accord from 20th December 1965 and he is therefore, not entitled to any relief.

8. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.
[No. 2/135/66-LRII.]

New Delhi, the 17th May 1969

S.O. 2039.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Colliery, Post Office Bhowra, District Dhanbad, and their workmen, which was received by the Central Government on the 13th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD.

REFERENCE NO. 39 OF 1968

PRESIDENT:

Shri Sachidanand Sinha, M.A.M.L, Presiding Officer.

PARTIES:

Employers in relation to the Bhowra Colliery.

Vs.

Their workman.

APPEARANCES:

None appeared.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, dated the 2nd of May, 1969

AWARD

1. The Central Government, being of opinion that an industrial tribunal exists between the employers in relation to the Bhowra Colliery, Post Office Bhowra, District Dhanbad and their workmen by its order No. 2/103/66-LRII, dated the 9th of September, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947, for adjudication the dispute in respect of the matter specified in the schedule annexed thereto. The schedule is extracted below:—

SCHEDULE

"Whether the action of the management of the Bhowra Colliery in stopping the work of Sri Ramdhan Passi, Pick Miner, 10 Seam, Parsiabad, during the period from the 3rd July, 1965 to the 23rd August, 1965 was justified? If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 131 of 1966 on its file. While it was pending there the proceeding was transferred to the Central Government Industrial Tribunal, No. 2, Dhanbad by the Central Government by its order No. 8/25/67-LRII, dated the 8th of May, 1967, where it was registered as reference No. 168 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII, dated the 13th of August, 1968, transferred the dispute to this tribunal and here it has been re-numbered as reference No. 39 of 1968.

3. Parties were directed to file their written statement by registered notices on several dates. But the workman failed to submit their written statement so far. After several adjournment the employers filed their written statement on the 5th of April, 1969. Their case is that the concerned workman was found on 3rd July, 1965, in his shift robbing coal from the floor area at an unauthorised place and consequently he was turned out of the mine by the Mining Sirdar and Overman. The concerned workman was ordered out of the mine on 3rd August, 1965 for that day only and thereafter the workman concerned was remaining absent voluntarily. Thereafter the concerned workman was chargesheeted on 14th August, 1965 for the misconduct of absenting from duty since 3rd July, 1965 without any information and permission. A departmental enquiry was consequently held and he was given full opportunity to cross-examine all the witnesses of the management and made his own statement in the departmental proceeding. The charge was satisfactorily established and the management considered absence due to fear and therefore, did not take any further action because according to the management the workman had suffered loss of his wages for the days of his absence.

When the concerned workman did not submit his written statement the case was adjourned to several dates for preliminary hearing but the workman did not appear. On 11th April, 1969, the case was fixed for final hearing but the workman did not appear and the case was again adjourned to 1st May, 1969 for final hearing. Even on the date of hearing none of the parties appeared. The Union who has espoused the cause of the concerned workman did not file the written statement nor file any document nor they appeared on the date of hearing. There is no explanation for this conduct of the Union except disinterestedness in the dispute.

4. Under such circumstances I am of the opinion that the Union is not further interested in proceeding with the reference.

5. Under these circumstances I hold that no dispute further exists between the parties and record 'No Dispute' award between the parties.

6. This is my award. It may now be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.
[No. 2/103/68-LRII.]

S.O. 2040.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Presiding Officer, Central Government Industrial Tribunal (No. 3), Dhanbad, in the matter of a complaint under section 33A of the said Act, from Shri Balkishun Dusadh, Fireman, which was received by the Central Government on the 13th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD.
COMPLAINT NO. 3 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L., Presiding Officer.

PARTIES:

Sri Balkishun Dusadh, Fireman, M/s. Balihari Colliery Company (P) Ltd.,

vs.

M/s. Balihari Colliery Company (P) Ltd.,

APPEARANCES:

For complainant: Shri S. V. Achariar, General Secretary and J. Bhattacharya, Executive Committee member, Hindustan Khan Mazdoor Sangh.

For opposite party: Sri S. S. Mukherjee, Advocate.

INDUSTRY: Coal

STATE: Bihar

Dhanbad, dated the 2nd May, 1969

AWARD

1. This is a complaint under section 33A of the Industrial Disputes Act, 1947 by one Sri Balkishun Dusadh, Fireman against the employer in relation to the Balihari Colliery, alleging that the opposite party has been guilty of contravention of the provisions of section 33 of the Act.

2. The case of the complainant is that an industrial dispute regarding retrenchment of 376 workmen of Balihari Colliery is pending in reference No. 22 of 1968 before this tribunal. The petitioner Sri Balkishun Dusadh is a member of Hindustan Khan Mazdoor Sangh. Reference No. 22 of 1968 is being sponsored by the Hindustan Khan Mazdoor Sangh. The petitioner was dismissed on 29th July, 1967 while reference No. 22 of 1968 was pending before this Tribunal. The opposite party did not make any application before this Tribunal for approval of the action of the management in dismissing the petitioner Sri Balkishun Dusadh.

3. According to the petitioner he was innocent and had not committed any offence or misconduct. The petitioner was served with a chargesheet dated 30th April, 1967. The charge was that he deliberately lowered the steam pressure and failed to remove the ashes (Chhai) during his duty and that the damage was done to the work in progress on account of his negligence. The petitioner submitted his written explanation on 3rd of May, 1967 denying the charges. According to the petitioner no enquiry was held and the dismissal of the petitioner was thoroughly *mala fide* and was a case of victimisation. The petitioner was an active member of Hindustan Khan Mazdoor Sangh and since he refused to become a member of pocket union backed by the management the petitioner was falsely implicated in a fabricated charge and has been victimised.

4. The action of the opposite party in withdrawing application under section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of dismissal of the

petitioner on the 8th of November, 1968 was *mala fide*. In short, the case of the petitioner is that he was dismissed from service on 29th July, 1967 while reference No. 22 of 1968 was pending before this tribunal and thus the opposite party has contravened the provisions of section 33 of the Industrial Disputes Act, 1947.

5. The opposite party has filed the written statement on 23rd December, 1968. On facts it was stated that the chargesheet dated 30th April, 1967 was issued to the applicant and he was suspended, during enquiry. The applicant submitted a reply to the chargesheet dated 3rd May, 1967 denying the charges. The notice dated 10th May, 1967 was issued to the workman fixing the enquiry 17th May, 1967 at the office of the Director. The applicant workman however, refused to attend the enquiry and hence he did not attend the departmental enquiry fixed on 17th May, 1967. It was held in his absence. In the departmental enquiry the misconduct mentioned in the chargesheets was satisfactorily established and the complainant was dismissed by letter dated 28th July, 1967 with effect from 29th July, 1967.

6. Reference No. 22 of 1968 was disposed of by an award dated 20th September, 1968. In this reference the opposite party under misconception of law had filed an application under section 33(2) (b) of the Industrial Disputes Act, 1947 for approval of dismissal of the petitioner. But the same was withdrawn by the opposite party on the 8th of November, 1968.

7. According to the opposite party the complainant was not a workman concerned in the reference No. 22 of 1968 and consequently the employers have not violated the provisions of Section 33 of the Industrial Disputes Act, 1947 and as such the present application is not legally maintainable. It was alleged that the dismissal of the complainant was legal, *bona fide* and based on proved misconducts. According to the opposite party they had also not violated any of the provisions of Section 33 of the Industrial Disputes Act, 1947 in dismissing the complainant. Since the complainant was not a workman concerned in reference No. 22 of 1968, the present application is not maintainable.

8. On behalf of the opposite party one witness Sri Siram Sinha, the manager of the colliery has been examined. He proved Ext. M-7 to M-9. In all 9 items of documents were exhibited by the opposite party and these are marked as ext. M-1 to M-9. On behalf of the workman one witness namely Sri Balkishun Dusadh, the concerned workman was examined and 4 items of documents are marked as Ext. M-1 to M-4.

9. The point for consideration is whether the opposite party have contravened the provision of section 33 of the Industrial Disputes Act, 1947?

10. There are certain admitted facts. Reference No. 22 of 1968 was originally referred to the Industrial Tribunal, Dhanbad by the Central Government's order No. 2/78/68-LRII dated the 19th of May, 1968 and thereafter it was transferred to the Central Government Industrial Tribunal, No. 2, Dhanbad by the Central Government's order No. 8/23/67-LRII dated the 8th of May, 1967. By the subsequent order No. 8/71/68-LRII dated the 13th of August, 1968, the Central Government transferred the dispute to this Tribunal. The reference was disposed of by the award dated 20th of September, 1968. The applicant was dismissed on 29-7-67. The opposite party had filed an application under section 33(2) (b) of the Industrial Disputes Act, 1947 for the approval of the dismissal of the petitioner but the same was later on withdrawn by the opposite party on the 8th of November, 1968. Therefore, the case of the applicant was that he was dismissed on 29-7-67 while the reference No. 22 of 1968 was pending before this Tribunal.

11. Before me the preliminary point was taken that the concerned workman Sri Balkishun Dusadh was not a workman connected with the dispute which was in question in reference No. 22 of 1968. It was not necessary for the management to file an application under section 33(2) (b). It was therefore, submitted by the opposite party that the present application under section 33 A is not maintainable.

12. The concerned workman Sri Balkishun Dusadh was dismissed on the 29th of July, 1967. At that time reference No. 22 of 1968 was pending before the Tribunal. The case of the opposite party is that Sri Balkishun Dusadh was not a workman connected with this dispute. Reference No. 22 of 1968 was for justification of retrenchment in respect to 376 workmen. In that case the management rescinded the retrenchment in respect of 127 workmen and the union agreed to

respect to the retrenchment of the remaining 249 workmen and they received their retrenchment compensation.

13. The point for determination is whether the concerned workman Sri Balkishun Dusadh may be said to have been connected in the dispute in reference No. 22 of 1968 which was pending before this Tribunal.

14. The law on this subject is laid down by two important decisions of the Supreme Court in New India Motors Private Ltd. V.K.T. Morris [1960-(I) L.L.J., page 551] and Digwadih Colliery V. Ramji Singh [1964-(II) L.L.J., page 143]. The combined effect of these two decisions of Supreme Court is that there must be some common feature in the nature of the dispute in the two cases which should serve as a connecting link thereby rendering the workmen in the latter case also, workmen concerned in the dispute in the earlier case. In other words the mere fact that the same union has taken up the cause of the two workmen or else that by virtue of S. 18(3)(b) of the Act all workmen may be bound by the award in the earlier dispute may not suffice unless there is some other common feature in the two disputes.

15. In the chargesheet dated 3-4-67 that was issued to Sri Balkishun Dusadh, the defence of Sri Balkishun Dusadh was that he was innocent and that he was being victimised for his trade union activities. There is no question of victimisation in respect to the aforesaid 249 workmen and the management rescinded retrenchment in respect to the remaining workmen. Therefore, there is no common feature in the nature of the dispute in two cases.

16. Therefore, the petitioner, Sri Balkishun Dusadh was not the workman connected with the dispute in reference No. 22 of 1968. The opposite party had filed an application under section 33(2) (b) of the Industrial Disputes Act, 1947 for approval but the same was ultimately withdrawn by the opposite party on 8-11-68. According to the opposite party they have filed the application under section 33(2) (b) of the Industrial Disputes Act, 1947 under misconception. There is nothing to prevent the employers from withdrawing the application made under provis^o of section 33(2) (b) when the employers find that the application has been made under misconception.

17. In this view of the evidence the concerned workman Sri Balkishun Dusadh was not a workman connected with the dispute which was in question in reference No. 22 of 1968. It was not necessary for the management to file an application for approval of the punishment by the tribunal under section 33(2)(b). Therefore, this application under section 33A is not maintainable.

The complaint under section 33A is held to be non-maintainable and my award therefore, is that this complaint is not maintainable. Let it be submitted to the Central Govt.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.
[No. 2/73/66-LRII.]

New Delhi, the 19th May 1969

S.O. 2041.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the East Bhugatdih Colliery, Post Office Jharia, District Dhanbad and their workmen, which was received by the Central Government on the 13th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 3) AT DHANBAD

REFERENCE NO. 63 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L.—Presiding Officer.

PARTIES:

Employers in relation to the East Bhugatdih Colliery

Versus

Their workmen.

APPEARANCES:

For employers.—Shri B. P. Dabral, Chief Personnel Officer.

For workmen.—Shri Lalit Burman, General Secretary, Bihar Koyal Mazdoor Sabha.

INDUSTRY: Coal

STATE: Bihar

Dhanbad, dated the 1st of May 1969

AWARD

1. The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the East Bhuggardin Colliery, Post Office Jharia, District Dhanbad and their workmen by its order No. 2/119/66-LRII, dated the 15th of November, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matter specified in the Schedule annexed thereto. The Schedule is extracted below:—

SCHEDULE

"Whether the dismissal of Sarvashri Sripati Bowri and Jai Bowri, Miners, East Bhuggatdih Colliery with effect from the 4th May, 1966, by the management of the said colliery was an act of victimisation? If not, to what relief are the workmen entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 156 of 1966 on its file. While it was pending there the Central Government by its order No. 8/25/67-LRII dated the 8th of May, 1967, transferred the dispute to the Central Government Industrial Tribunal, No. 2, Dhanbad where it was registered as reference No. 192 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 13th of August, 1968 transferred the dispute to this tribunal and here it has been re-numbered as reference No. 63 of 1968.

3. The employers filed the written statement on 16th January 1967. Their case is that Sarvashri Jai Bowri and Sripati Bowri were employed as piece-rated miners at the Selected Jharia unit of the East Bhuggatdih Colliery at the relevant time. According to the management from the 25th of January, 1966 (2nd shift) a total number of 76 piece-rated miners belonging to the three shifts, who were employed in the Development Galleries left their appointed places of work and started forcibly to cut the floor coal from the area between the 24th and 26th Levels in breach of the persuasions, orders and admonitions of the Supervisory Mining Staff. They are between the 24th and 26th levels was being worked out by the management in accordance with the restrictions imposed by the Department of Mines, inasmuch as this area directly underlay the populous town and residential areas of Jharia Town. The management apprehended the continuance of the breach of discipline referred to would seriously endanger safety to the mine. When all persuasions failed to bring about results, the management fenced off the area and prohibited miners from entering that area or cutting floor coal therefrom effective from the 31st January, 1966.

4. In spite of the above prohibition, miners of the night shift of 31st January, 1966 forcibly removed the fences and forcibly worked in that area. In the morning shift of the succeeding day, i.e. on 1st February 1966 the fencing was restored twice, but it was broken twice and miners forcibly worked in the prohibited area.

5. Under the aforesaid circumstances, the management issued charge sheets on all the 76 miners of the 3 shifts and suspended them all forthwith.

6. The domestic enquiries were held into the whole matter in full accordance with the principles of natural justice wherein the concerned workmen were given every chance to rebut the charges levelled against them, to examine their own witnesses and to make their own submissions. During the enquiry the charges levelled against the workmen were found to have been established. It further showed that out of the total of 76 miners charge sheeted, 16 had played a dominant and aggressive role. The evidence further showed that even out of the 16 workmen referred to, the greatest responsibility lay on two of the charge sheeted miners including Shri Joy Bowri and Sripati Bowri, the concerned workmen. Sarvashri Joy Bowri and Sripati Bowri were dismissed from service with effect from 4th May, 1966. According to the management the dismissal of Sri Joy Bowri and Sripati Bowri, miners of East Bhuggatdih colliery with effect from the 4th May, 1966 was not an act of victimisation but was *bona fide* and for the proper maintenance

of discipline and their dismissal were effected in full accord with the principles of natural justice.

7. The General Secretary, Bihar Koyal Mazdoor Sabha filed the written statement on behalf of the workmen on 7th February, 1967. Their case is that the aforesaid two workmen were the permanent employees of the colliery. In this particular section of the mine (selected Jharia) coal was being cut from the development galleries and also from floor area. Work in the galleries faces was extremely difficult while work in floor area offered a much easier condition. The miners working in the gallery faces were demanding difficulty allowance and blasting facilities. According to the union the management attempted to force the miners to work in the gallery faces, while denying their just claims of difficulty allowances and blasting facilities. The management in order to overcome the resistance of these miners, suspended them *en-masse* from 1st February 1966 and issued charge sheets alleging various misconducts. The allegation of breaking fences etc. was not true and was invented by the management in order to victimise the workmen.

8. In consequence of the departmental proceeding the management suspended for 10 days 74 miners, and dismissed only Jai Bowri and Sripati Bowri. The action of the management in attributing significant role and special responsibility as a ground of dismissing Jai Bowri and Sripati Bowri were nothing but invention by the management. The management victimised these two concerned workmen with the intention of intimidating the general body of miners and thus to force them to accept a very hard condition of work in the galleries. According to the union the dismissal of the concerned workmen Sarvashri Jai Bowri and Sripati Bowri was unjust, unfair, and motivated by the spirit of victimisation. The union therefore, prayed for reinstatement with full back wages of the concerned workmen.

9. On behalf of the management 12 items of documents were exhibited and they are marked as exts. M-1 to M-12. No document was exhibited on behalf of the union. No evidence was examined on behalf of the either party.

10. The point for consideration is whether the dismissal of Sarvashri Jai Bowri and Sripati Bowri by the management was an act of victimisation. I shall take up the case of the concerned workman Jai Bowri and Sripati Bowri separately.

Case of Jai Bowri

11. Ext. M-1 is the chargesheet issued to Jai Bowri on 1st February 1966. The charge against Sri Jai Bowri was that "during the night of 31st January 1966 when he was on duty in the 3rd shift he forcibly removed the fencing around the 24th and 26th levels of the Heightening area in the Mine, entered the said area and cut coal from the floor, thereby committing misconduct punishable under para 29(19) of the Standing Orders for this establishment, read with Coal Mines Regulations 1957, Regulation 38 and Regulation 115(1)" Ext. M-2 is the reply to the charge sheet. In his reply to the chargesheet he had stated that he never tampered with the fencing and worked in the unfenced area.

12. The departmental enquiry into the chargesheet against Jai Bowri was held by Sri K. V. Ayyar, Group Welfare Officer and he submitted his report on 21st March 1966. In the departmental enquiry five witnesses were examined viz. S/Sri (1) D. C. Parmanik, MW-1 (2) T. P. Banerjee, MW-2 (3) C. R. Bhadra, MW-3, (4) S. S. Mitra, MW-4 (5) B. Sinha, MW-5. Out of the aforesaid witnesses examined on behalf of the management MW-1 Sri D. C. Parmanik, MW-3 Sri C. R. Bhadra, MW-4 Sri S. S. Mitra and MW-5 Sri B. Sinha were not present in the 3rd shift of 31st January 1966 and therefore, the aforesaid witnesses were not eye witnesses. Out of the witnesses examined on behalf of the management only Sri T. P. Banerjee (MW-2) was present in the 3rd shift of 31st January 1966 when the occurrence took place. He also does not say in his evidence that Jai Bowri forcibly removed the fencing. According to the enquiring officer Sri Jai Bowri, Profulla Bowri, Yugal Bowri and Hem Bowri were the spokesmen of the workmen. The enquiring officer further says that Sri Jai Bowri along with others waited in deputation on the Manager and the Assistant Manager and had given assurance and guarantee to the management that the miners should be permitted to work in the proposed area. According to MW-1 Sri D. C. Parmanik, Sri Jai Bowri was allotted to work in the floor area. Therefore, he had no real grievance against the management. MW-2 was only eye witness of the occurrence, who also does not say in his evidence that Sri Jai Bowri removed the fencing. According to the enquiring officer he was punished as he was the spokesman of the workmen and he waited in deputation on the manager and the assistant manager and had given assurance on behalf of the workmen. According to the enquiring officer Sri Jai Bowri, Profulla Bowri, Yugal Bowri and Hem Bowri were the spokesmen of the workmen. But only Sri Jai Bowri

was recommended by the enquiring officer for dismissal whereas the remaining three workmen (1) Profulla Bowri (2) Yugal Bowri and (3) Hem Bowri were let off by giving a warning. It was therefore, argued on behalf of the union that the management was guilty of discrimination. Since Jai Bowri was given the highest punishment of dismissal whereas the remaining three workmen *viz.* Sri Profulla Bowri, Yugal Bowri and Hem Bowri were let off by giving a warning.

13. Sri Jai Bowri was not found guilty for the charge of breaking the fencing but was dismissed on account of the fact that he was waiting in deputation on the manager and the assistant manager and gave them assurance on behalf of the workmen. The workman was therefore, punished not for committing the misconduct for which he was charged but because he had displeased the management by his espousing the cause of the other workmen. Under such circumstances the management is clearly guilty of victimisation.

Case of Sripati Bowri

14. Ext. M-5, is the charge sheet, dated 1st February, 1966, issued to Sripati Bowri. The charge was that "on 1st February, 1966 he removed the fencing between the 24th and 26th level and entered the area for cutting coal". Ext. M-6 is the reply to the charge-sheet. He had denied the charge and has stated that he did not remove the fencing on 1st February, 1966 and that he worked in the fenced area.

15. The departmental enquiry was held by Sri K. V. Ayyar, the Group Labour Welfare Officer and he submitted his report on 19th March, 1966. Five witnesses were examined during the departmental enquiry on behalf of the management, *viz.*, (1) Sri T. P. Banerjee, Overman (MW-1), (2) Sri C. R. Bhadra, MW-2, (3) Chandra Mohan Singh, MW-3, (4) Sri S. B. Sah, MW-4 and B. Sinha, Assistant Manager, MW-5, MW-1, Sri T. P. Banerjee was not present in the 1st shift of 1st February 1966 and therefore, he was not an eye witness of the occurrence. MW-4, Sri S. B. Sah, the manager was also not present at the time of the occurrence. MW-2, Sri C. R. Bhadra, MW-3, Chandra Mohan Singh and MW-5, B. Sinha were the eye witness of the occurrence. MW-2 Sri C. R. Bhadra, Overman was present at the time of the occurrence and he has named the persons who broke the fencing *viz.*, Meghu Bowri, Paku Ral, Dasu Bowri and Manohar Bowri. According to him Sripati Bowri was not the person who actually broke the fencing. MW-3, Sri C. M. Singh has also not named Sri Sripati Bowri as the person who actually broke the fencing. According to him Meghu, Paku, Lilloo and Dasu Bowri were breaking the fencing. He further stated that Sripati Bowri was shouting in Hindi "FENCING KHOL DO. BAD ME DEKHA JAYAGA. YAHIN KOYALA KATO". MW-5, Sri Sinha has also named the person who had broken the fencing and according to him Manohar Bowri, Beghu Bowri and Dasu Bowri were breaking the fencing. He has also not named Sripati Bowri as the person who was breaking the fencing. As a matter of fact none of the witnesses examined before the Enquiring Officer stated that Sripati broke the fencing.

16. The charge against Sripati Bowri was for removal of the fencing for which there was no evidence. Only one Witness MW-3 C.R. Bhadra has stated that Sripati Bowri incited the workmen to break the fencing. According to the enquiring officer also Sripati Bowri only gave a lead to all the workmen for breaking the fencing for the second time. But he was not charged on that count. According to the enquiring officer he was given the highest punishment of dismissal because he had given assurance and guarantee on behalf of the workmen.

17. The evidence shows that he was not punished because he was found guilty of the charge but because he gave lead to all the workers and gave assurance and guarantees on behalf of the workmen. It appears that he had displeased the employers for being the spokesman of the workmen and he was punished on that account and not for committing the misconduct for which he was charged.

18. These two concerned workmen were punished for being the spokesmen of the workmen and for having given assurance and guarantees on behalf of them. This was clearly an act of victimisation and the punishment inflicted on these two workmen was unjustified.

19. The mere fact that the domestic enquiry was made after due observation of the rules of natural justice will not show that there was no victimisation. The two are entirely different. Even after finding in favour of the employer that the enquiry was in accordance with the rules of natural justice it is open to

the Tribunal to examine the question whether there was victimisation or unfair labour practice.

20. I therefore hold that the dismissal of Sarvashree Jai Bowri and Sripati Bowri, miner of East Bhugatdih Colliery with effect from the 4th May, 1966 by the management was an act of victimisation and they are entitled to be re-instated with full back wages from the date of their dismissal upto the date of their reinstatement with continuity of service.

21. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.
[No. 2/119/66-LRII.]

S.O. 2042.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Central Angarpathera Colliery, Post Office Sijua, District Dhanbad and their workmen, which was received by the Central Government on the 13th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 3) AT DHANBAD
REFERENCE No. 95 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L., Presiding Officer.

PARTIES:

Employers in relation to the Central Angarpathera Colliery
AND

Their workmen.

APPEARANCES:

For employers—Shri R. D. Sachdeva.

For workmen—La'it Burman, General Secretary.

INDUSTRY: Coal

STATE: Bihar

Dhanbad, the 7th of May, 1969

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Central Angarpathera Colliery, P.O. Sijua, District Dhanbad and their workmen, by its order No. 2/35/67-LRII dated the 16th of March, 1967, referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in schedule annexed thereto. The Schedule is extracted below:

SCHEDULE

(i) Whether the management of the Central Angarpathera Colliery of Messrs Central Angarpathera Colliery Company, Post Office Sijua, District Dhanbad was justified in keeping Shri R. K. Bose, Electrician, under suspension from the 25th July, 1966 to the 13th September, 1966 and dismissing him from service with effect from the 14th September, 1966? and

(ii) If not, to what relief is the workman entitled?

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 28 of 1967. While it was pending there the Central Government, by its order No. 8/25/67-LRII dated the 8th May, 1967 transferred the dispute to the Central Government Industrial Tribunal, No. 2, Dhanbad where it was registered as reference No. 225 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 13th of August, 1968 transferred the dispute to this tribunal and here it has been re-numbered as reference No. 95 of 1968.

3. Both the parties had filed their respective written statement but it is unnecessary to state the respective cases of the parties because the dispute has now been settled. The parties have filed a compromise petition at annexure 'A'. According to the terms of compromise the employer have paid the concerned workman Shri Ranjit Kumar Bose, a sum of Rs. 600 (Rupees six hundred only) in full and final settlement of all his claims. The workman has agreed not to press for his claim of reinstatement. The terms appear to be satisfactory and are accepted. Accordingly an award is made in terms of the joint petition of compromise, a copy of which is annexed with the award.

The award may now be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.

ANNEXURE 'A'

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. III, DHANBAD

REFERENCE No. 95 OF 1968

AND

In the matter of an Industrial Dispute

BETWEEN

The employers in relation to Central Angarpathera Colliery

AND

Their workman

The parties above named beg to submit as follows:—

That the above reference has been amicably settled between the parties on the following terms:—

1. That the employers have paid to Shri Ranjit Kumar Bose, the workman concerned in this dispute, a sum of Rs. 600 (Rupees six hundred only) in full and final settlement of all his claims and demands up-to-date.
2. That the workman concerned will not press for his reinstatement.
3. That the parties will bear their own respective cost of this proceeding.

It is, therefore humbly prayed that the reference may kindly be disposed of on the terms aforesaid and an Award passed in the terms of the compromise.

For Employers

For Central Angarpathera Colliery Co.

(Sd.) R. D. SACHDEVA,
Owner.

For Workman

(Sd.) LALIT BARMAN,

General Secretary,

Bihar Koya Mazdoor Sabha

and

(Sd.) RANJIT KUMAR BOSE
Workman Concerned.

[No. 2/35/67-LRII.]

New Delhi, the 20th May 1969

S.O. 2043.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Colliery, Post Office, Dhanbad and their workmen, which was received by the Central Government on the 13th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2)
AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE No. 2 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Bhowra Colliery, Post Office, Dhanbad,

AND

Their Workmen

APPEARANCES:

On behalf of the Employers—Shri K. C. Nandkeolyar, Deputy Chief Personnel Officer.*On behalf of the Workmen*—Shri Ram Mitra, Secretary, Bihar Koyal Mazdoor Sabha.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 9th May, 1969.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bhowra Colliery, Post Office, Dhanbad and their workmen, by its order No. 2131/67-LRII, dated 13th April, 1967 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

“(1) Whether the dismissal of Shri Lakha Saw, Stowing Fitter, by the management of the Bhowra Colliery with effect from the 17th October, 1966 was justified?

(2) If not, to what relief is the workman entitled?”

2. Workmen as well as the employers filed their statement of demands.

3. Shri Lakha Saw (hereinafter referred to as the affected workman) was a stowing fitter No. 4 and 5 Pit of Bhowra Colliery of the employers. On 7th October, 1966 the Manager of the colliery issued a charge-sheet to the affected workman alleging misconduct in terms of order 27(2) of the Standing Orders on his part for committing fraud and dishonesty in connection with the company's business, stating that in connivance with another stowing fitter Shri Bisram Roy, he procured by mis-representation over-time slip from the Assistant Manager in respect of stowing mazdoors for 11th September, 1966 and 13th September, 1966 and got the attendances of those stowing mazdoors recorded by the attendance clerk fraudulently, knowing fully well that the said stowing mazdoors had not worked overtime on the said dates. A similar charge-sheet was issued to the other stowing fitter, Shri Bisram Roy. The affected workman as well as Shri Bisram Roy denied the charges. The Welfare Officer of the colliery held a common domestic enquiry in respect of the charge-sheets issued to the affected workman and Shri Bisram Roy. After concluding the enquiry the Enquiry Officer submitted the enquiry report holding the affected workman and Shri Bisram Roy guilty of the charges. The recommendation of the Enquiry Officer for dismissal of the affected workman and Shri Bisram Roy was accepted by the Manager and the Agent of the colliery and accordingly the affected workman was dismissed from service with effect from 17th October, 1966, by a letter of the Manager of the same date. These facts are not in dispute. The case of the workmen is that the domestic enquiry was not proper and it violated principles of natural justice and the findings arrived at by the Enquiry Officer were perverse and that the affected workman was dismissed to victimise him for his trade union activities and also for his refusal to vacate the quarter allotted to him. The employers denied knowledge of any trade union activity of the affected workman and also denied that his dismissal had anything to do with his refusal to vacate the quarter.

They pleaded that the dismissal of the affected workman was in accordance with the Standing Orders as a result of a proper domestic enquiry. The workmen were represented by Shri Ram Mitra, Secretary, Bihar Koyal Mazdoor Sabha and the employers by Shri K. C. Nandkeolyar, Deputy Chief Personnel Officer. On admission by the employers Ext. W1 for the workmen and on admission by the workmen Exts. M1 and M2 for the employers were marked. On behalf of the workmen the affected workman was examined as WW.1 and Exts. W2 and W3 were marked. The employers examined 2 witnesses and marked Exts. M3 to M15.

4. At the outset I should like to consider how far the domestic enquiry conducted by the employers against the affected workman was proper. The charge-sheet issued to the affected workman is Ext. M1. The allegation was that on 11th September, 1966 and 13th September, 1966, the affected workman along with Shri Bisram Roy fraudulently got marked attendance of certain workmen as having worked overtime and also procured overtime slip in respect of the workmen. It was also alleged that both of them approached all the workmen for handing over to them the excess amounts drawn by them for the alleged overtime and in some cases the affected workman and Shri Bisram Roy received the amount also from some of the workmen. On the charge-sheet itself the affected workman submitted his explanation denying the charge in its entirety. The Welfare Officer, Shri B. M. Lall who conducted the joint enquiry is examined as MW.1. The enquiry proceedings are Ext. M8 and the enquiry report is Ext. M7. In the enquiry report, Ext. M7 the Enquiry Officer, MW.1 has stated the case against the affected workman, the witnesses examined before him and the evidence on which his evidence was based. This Tribunal cannot sit over the judgement of the Enquiry Officer as an Appellate authority and enter into appreciation of the evidence or substitute its own conclusions from the evidence for those of the Enquiry Officer. But the Tribunal is quite competent and it is its duty also to see if there was any material before the Enquiry Officer to support his finding. Having discussed the evidence placed before him the Enquiry Officer, MW.1 concludes his report, Ext. M7 by stating, "so from the above facts I am convinced that these accused are guilty of the offences (charges) levelled against them". The Enquiry Officer, MW.1 examined Shri G. S. Singh, the Assistant Manager, Shri N. Chakravorty register clerk and six workmen for whom the affected workman and Shri Bisram Roy were alleged to have got overtime attendance marked fraudulently by the register clerk and procured the overtime slip from the Assistant Manager. But Shri G. S. Singh, the Assistant Manager had not even mentioned the name of the affected workman in his evidence. On the other hand, he had deposed in the cross-examination that it was Shri Bisram Roy who fraudulently got the overtime slip signed by him. Shri N. Chakravorty, the register clerk also had said nothing against the affected workman. He had stated that he did not remember as to which of the either or two (Sarvashri Bisram Roy and Lakha Saw) gave him the overtime slip. None of the workmen had whispered even the name of the affected workman in their evidence. The workman, Shri Bhagirat Kumar had in his evidence that the affected workman had asked him to pay him the extra amount received by him and he paid him Rs. 10. Thus, the only evidence before the Enquiry Officer against the affected workman was that of the workman, Shri Bhagirat Kumar to the effect that the affected workman had asked and received Rs. 10 from him who had received the amount as his wages for the overtime which he did not work. The possibility cannot be ruled out that having come to know that the workman, Shri Bhagirat Kumar had received some easy money, the affected workman demanded a share out of it. But that does not necessarily give rise to the inference that the affected workman himself got the attendance marked fraudulently by the register clerk and procured by mis-representation the overtime slip from the Assistant Manager for the workmen in respect of the overtime which they did not do. Asking and receiving money from a workman by itself is not a misconduct within the meaning of order 27 of the Standing Orders. Exts. M8 to M13 are said to be reports by the workmen produced before the Enquiry Officer. But none of them has any reference to the affected workman. Thus, the finding of the Enquiry Officer holding the affected workman guilty of the charge is absolutely without any material and as such, it is perverse. The employers were at liberty to produce evidence afresh to justify the action taken by them against the affected workman. But they did not produce any such evidence. MW.2 is no other than Shri Bisram Roy who was charged and dismissed along with the affected workman, but reinstated on his tendering apology. Obviously, he is obliged to give evidence favourable to the employers. I cannot accept his evidence to any extent. Consequently, the dismissal of the affected workman based upon the perverse finding cannot be upheld. The workmen have taken

objections to the domestic enquiry stating that the affected workman was not given opportunity to cross-examine the prosecution witnesses, the statements were not read over and explained and opportunity was not given for defence evidence. But, having gone through the enquiry proceedings, Ext. M6 and the evidence of the Enquiry Officer, MW.1, I do not find any substance in any of the objections. The objections are over-ruled.

6. It is in the evidence of the affected workman, WW.1 that he is a member since 8 or 9 years and an Executive Committee Member since 7 or 8 years of the Bihar Koyal Mazdoor Sabha and that in respect of the quarter occupied by him the management persistently asked him to vacate it. Ext. W.1 is a letter from the Manager of the colliery to the affected workman and others stating that they had occupied a quarter unauthorisedly, that they should hand over vacant possession of the quarter to the Labour Welfare Officer within 24 hours and that in default disciplinary action would be taken against them. This letter is dated 5th October, 1966 and on the very next day, the charge-sheet, M1 was issued to the affected workman. It creates a suspicion that perhaps the action of the management in issuing the charge-sheet, Ext. M1 which ended in dismissal of the affected workman, was due to his disobedience of the direction given to him through Ext. W.1 and it was with a view to victimise him. But, I have already held that the dismissal of the affected workman cannot be withheld as it was made on the perverse finding of the Enquiry Officer.

7. I therefore, hold that the dismissal of the affected workman, Shri Lekha Saw, Stowing fitter, by the management of the Bhawra Colliery with effect from the 17th October, 1966 was not justified and, consequently, he is entitled to his back wages and other emoluments with effect from 17th October, 1966 to the date of his actual reinstatement in his original position as a stowing fitter. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,
Presiding Officer,
Central Government Industrial Tribunal (No. 2), Dhanbad.
[No. 23167-LRII.]

New Delhi, the 21st May 1969

S.O. 2044.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the management of Kendwadin Colliery of Messrs Hurriladih Coal Company Limited and their workmen, which was received by the Central Government on the 14th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 44 OF 1967

PARTIES:

Employers in relation to the management of Kendwadin Colliery of Messrs. Hurriladih Coal Company Limited
and
Their Workmen

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES:

For the Employers: Shri A. D. Sukla, Group Personnel Officer.

For the Workmen: Shri Lalit Burman.

STATE: Bihar

INDUSTRY: Coal

Dhanbad, dated, the 9th May, 1969

AWARD

The Central Government, in the Ministry of Labour, Employment and Rehabilitation, has made this reference to this Tribunal by its order No. 2/106/67-LRII dated the 24th October, 1967 for adjudication of an Industrial dispute which has been described in the schedule as follow:

SCHEDULE

"Whether the management of the Kendwadih Colliery of Messrs Hurriladih Coal Company Limited, Post Office Dhansar were justified in stopping their Workman Smt. Radhi Bowrin, Pit Head Bath Kamin from work for the period from the 28th July, 1966 to the 4th September, 1966 and thereafter terminating the services of the said workman with effect from the 5th September, 1966? If not, to what relief is the workman entitled?"

The parties came to terms and they filed their terms of settlement on the 19th January, 1968. According to those terms, Smt. Radhi Bowrin was to get a sum of Rs. 1200 as retrenchment compensation on the order of the termination of service being treated as an order of retrenchment with effect from the 5th September, 1966 if the Medical Board of the Central Hospital at Dhanbad certified on examining her that she was not suffering from any contagious disease and was physically fit for work as Pit Headbath Kamin (Attendent). On the other hand, she was to get a sum of Rs. 400 (Rupees four hundred) only in full and final settlement of all her claims if the Medical Board gave her a certificate to the effect that she was physically unfit for work or was suffering from a contagious disease. Several attempts have since been made to get Smt. Radhi Bowrin to appear for medical examination before the Medical Board of the Central Hospital on dates fixed by them but she has never appeared. The result is that no certificate either to the effect that she is fit or to the effect that she is unfit is available. Shri Lalit Burman, General Secretary, Bihar Koila Mazdoor Sabha, who has throughout appeared for the workman, is present in Court today and so is the representative of the management. Shri Burman states that he has done his best to contact Smt. Radhi Bowrin but has been unable to do so.

The Management's representative prays that, since Smt. Radhi Bowrin has not appeared for medical examination for more than 15 months from the date of agreement, it may be ordered that the management should pay a sum of Rs. 400/- (Rupees four hundred) only to Smt. Radhi Bowrin in full and final settlement of all her claims according to term No. 3 of the agreement between the parties. Shri Lalit Burman agrees.

In the result I give my award in accordance with the terms of the settlement dated the 19th January, 1968 which will form part of this award. I further direct that term No. 3 of the award comes into operation in the circumstances of this case.

Let a copy of this award be submitted to the Central Government under Section 15 of the Industrial Disputes Act.

(Sd.) KAMLA SAHAI,
Presiding Officer.
[No. 2/106/67-LRII.]

New Delhi, the 22nd May 1969

S.O. 2045.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 3, Dhanbad, in the industrial dispute between the employers in relation to the South Govindpur Colliery of Shri H. I. Pathak, Post Office Katrasgarh, District Dhanbad, and their workmen, which was received by the Central Government on the 13th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 3) AT DHANBAD

REFERENCE NO. 81 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L., Presiding Officer.

PARTIES.

Employers in relation to the South Govindpur Colliery

Vs.

Their workmen.

APPEARANCES :

For employers—Sri S. S. Mukherjee, Advocate and member Executive Committee, ICO.

For workmen—Shri Shanker Bose, Secretary, Colliery Mazdoor Sangh.

INDUSTRY: Coal

STATE. Bihar.

Dhanbad, dated the 1st of May, 1969

AWARD

1. The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the South Govindpur Colliery of Shri H. I. Pathak, Post Office Katrasgarh, District Dhanbad and their workmen by its order No. 2/2/67-LRII dated the 2nd of February, 1967 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the Schedule annexed thereto. The schedule is extracted below:

SCHEDULE

“(a) Whether the management of South Govindpur Colliery of Shri H. I. Pathak, Post Office Katrasgarh, District Dhanbad was justified in dismissing from service Shri Ramdutt Singh, Pump Khalasi with effect from the 31st October, 1966 in spite of the fact that the case of suspension of Shri Ramdutt Singh from the 1st August, 1966 was pending adjudication before the Central Government Industrial Tribunal Dhanbad?

(b) If not, to what relief is the workman entitled?

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 12 of 1967 on its file. While it was pending there the proceeding was transferred by the Central Government by its order No. 8/25/67-LRII dated the 8th of May, 1967 to the Central Government Industrial Tribunal, No. 2, Dhanbad where it was registered as reference No. 210 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 13th of August, 1968, transferred the dispute to this tribunal and here it has been re-numbered as reference No. 81 of 1968.

3. The employer filed the written statement on 19th January, 1968. Their case is that a chargesheet dated 1st August, 1966 was issued to Shri Ramdutt Singh for breaking walls of 14 seam attendance room and stealing away two door leaves along with the door frame fitted therein on 27th August, 1966. Shri Ramdutt Singh submitted his explanation dated 5th August 1966 denying the charge. In spite of the repeated chances Sri Ramdutt Singh refused to attend the departmental enquiry and therefore, it was held *ex parte* in his absence. In the aforesaid departmental enquiry, the misconduct mentioned in the chargesheet was satisfactorily proved and he was therefore, dismissed by letter dated 29th October, 1966 with the approval of the Agent.

5. It was further submitted that the case of suspension was referred to the Tribunal for adjudication by a notification dated 15th of November, 1966. The dismissal of Shri Ramdutt Singh was with effect from 31st October 1966 and as such it was not during the pendency of the adjudication before the Central Government Industrial Tribunal, Dhanbad regarding the case of suspension from 1st August, 1966.

6. The Secretary, Colliery Mazdoor Sangh filed the written statement on 24th September, 1968. Their case is that Sri Ramdutt Singh has been working permanently as a Pump Khalasi at South Govindpur Colliery. On the 1st of August, 1966 the concerned workman Sri Ramdutt Singh was chargesheeted and simultaneously suspended pending enquiry for an alleged offence of theft of a door beam and for breaking of walls. The concerned workman Sri Ramdutt Singh denied the charges in his reply to the chargesheet. According to the concerned workman the walls collapsed due to a storm and while all other materials were taken away by one of the contractors, the door beam was left carelessly which he took to his quarter and fitted there since there was no door in his quarter. According to the union since the quarter in which the door was fitted by the concerned workman belonged to the management and also since he had been actuated with a desire to protect the company's property in a useful manner which involved no motive of theft and that the alleged removal of the door beam from an unprotected place to another quarter of

the company, could not, be considered as theft. According to the union the management without holding any enquiry into the chargesheet in presence of the concerned workman, dismissed him by letter dated 29th October 1966. According to the union the action of the management in terminating the services of the workman concerned was unjustified and was in contravention of the provisions of the Standing Orders in breach of section 33 of the Industrial Disputes Act, according to the union Sri Ramdutt Singh was an active member of the union. The management did not like his union activities and dismissed him by way of victimisation.

7. On behalf of the management Sri V. H. Thaker, the manager of the colliery was examined as a witness and is MW-1. The management has also filed 9 items of documents which are marked as Ext. M-1 to M-9. The workman has not filed any document nor any witness was examined on behalf of the workman.

8. The point for consideration in this reference is whether the management was justified in dismissing from service Sri Ramdutt Singh, Pump Khalasi with effect from the 31st October, 1966.

9. Ext. M-1 is the chargesheet dated 1st August 1966. The allegation was that the concerned workman Sri Ramdutt Singh broke the walls of 14 seam attendance room and stole away two door leaves along with the door frame fitted therein on 28th July 1966. Ext. M-2 is the reply to the chargesheet. In his reply the concerned workman Sri Ramdutt Singh stated that the attendance room collapsed due to storm after which the corrugated Iron Sheet and other materials of the room were taken away by Shri Ramdeo Singh, Contractor and deposited at the office. The door beams with the panels were left behind, and since there was every chance that the same may be taken away by some outsiders and since there was no door in his quarter he brought them and fitted in his house and the quarter in which he was living is the Company's quarter and door fitted therein remains Company's property.

10. In his reply to the chargesheet it was admitted that he took away the aforesaid materials of the company. His plea was that he fitted the same in his quarter which was the property of the management. Ext. M-3 is the notice of enquiry informing the concerned workman Sri Ramdutt Singh that the enquiry into the chargesheet will be held on 22nd September 1966 at 4 P.M. in the office of the Cashier Sri K. B. Upadhyaya. The concerned workman did not attend the enquiry on 22nd September 1966. Ext. M-4 is the another notice issued by the manager fixing the date of enquiry on 26th September 1966 at 4 P.M. Even on that date the concerned workman did not appear before the enquiring officer.

11. The evidence discussed above goes to show that the concerned workman was given an opportunity to defend himself but he deliberately and without any reasonable ground absented himself. The management had no alternative but to hold the enquiry *ex parte*. The concerned workman cannot be allowed to contend that the action of the management in holding the enquiry *ex parte* was not fair and proper.

12. The enquiry was conducted by Sri K. B. Upadhyaya. He examined two witnesses viz. Sri Ramdeo Singh and Ramrekha Singh. Both of them were eye witnesses of the occurrence. They stated that Ramdutt Singh had broken the wall with cross bar and had moved the door leaves. They further stated that the door fitted in his quarter is not that of 14 seam attendance room-because the door frame fitted in his house are without any paint and marking whereas the door frame and leaves of 14 seam attendance room was painted green and "14 seam" was written on it. The enquiring officer relying on the statement held that the charge was proved and he therefore, recommended for dismissal of the concerned workman. His recommendation was accepted and by letter dated 29th October 1966 he was dismissed by the management.

13. According to the management the concerned workman Sri Ramdutt Singh after dismissal approached the management and received his full and final payment. MW-1 Sri V. H. Thaker, has stated in his evidence that the cash voucher (Ext. M-9) is in his pen, and bears the thumb impression of the concerned workman. Ext. M-9 shows that on 27th April 1969 the concerned workman Sri Ramdutt Singh received a sum of rupees 200/- in full and final payment of his dues. The concerned workman Sri Ramdutt Singh has not come to deny this fact.

14. In this view of the evidence I hold that the management was justified in dismissing from service Sri Ramdutt Singh, Pump Khalasi with effect from the 31st of October, 1966.

15. The second point for consideration is whether the dismissal of the concerned workman Sri Ramdutt Singh Pump Khalasi with effect from 31st October, 1966

was passed during the period the case of his suspension from the 1st August, 1966 was pending for adjudication before the Central Government Industrial Tribunal, Dhanbad.

16. The reference concerning the suspension of Sri Ramdutt Singh, Pump Khalasi with effect from the 1st of August, 1966 was referred to the Central Government Industrial Tribunal, Dhanbad by the Central Government's order No. 2/149/66-LRII dated the 15th of November, 1966. The dismissal of Sri Ramdutt Singh was with effect from the 31st of October, 1966 and as such it was not during the pendency of the adjudication before the Central Government Industrial Tribunal, Dhanbad referring the case of suspension of Sri Ramdutt Singh from 1st of August, 1966.

17. I therefore, hold that the order of dismissal was not passed during the pendency of the reference in connection with the suspension of the concerned workman Sri Ramdutt Singh from the 1st of August, 1966.

18. Under the circumstances mentioned above I am satisfied that the dismissal of Sri Ramdutt Singh Pump Khalasi was justified. I am unable to find any infirmity in the enquiry proceeding or in the report of the enquiring Officer. The concerned workman Sri Ramdutt Singh is therefore, not entitled to any relief.

19. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.
[No. 2/2/67-L.R.II.]

ORDER

New Delhi, the 23rd, May 1969

S.O. 2046.—Whereas an industrial dispute exists between the employers in relation to the Pure Samla Colliery Post Office Nutandanga, District Burdwan and their workmen represented by the Colliery Mazdoor Sabha, Post Office Asansol, District Burdwan.

And whereas the said employers and their workmen have by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), referred the said dispute to arbitration by the person mentioned therein, and a copy of the said arbitration agreement has been forwarded to the Central Government;

Now, therefore, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement which was received by it on the 26th April, 1969.

FORM C

(See Rule 7)

Agreement

(Under Section 10A of the I.D. Act 1947).

BETWEEN

Name of the Parties:

Representing Employers.—(1) Shri M. L. Matto, Agent Pure Samla Colliery, P.O. Nutandanga, Dist—Burdwan.

Representing workmen.—(2) Shri B. N. Tewari, General Secretary, Colliery Mazdoor Sabha, G.T. Road, Asansol.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri C Prakash Joint Director of Mines Safety, Sitarampur No. II Region, Sitarampur, Dist.—Burdwan.

(1) Specific matter in dispute:

"Whether the management of Pure Samla Colliery P.O. Nutandanga, Dist—Burdwan have got working faces or can provide working faces

where 23 under ground Machine Loaders under reference can be provided work; and if so how long?"

(ii) Details of the parties to the dispute indicating the name and addresses of the establishment or undertaking involved:-

Employers in relation to Pure Samla Colliery P.O. Nutandanga, Dist.—Burdwan, of M/s. Pure Samla Coal Co., (P.) Ltd., The workmen represented through the Colliery Mazdoor Sabha (AITUC) P.O. Asansol, Dist.—Burdwan.

(iii) Colliery Mazdoor Sabha, P.O. Asansol, Dist., Burdwan.

(iv) Total number of workmen engaged in the undertaking affected—Approximate 340.

(v) Estimated number of workmen affected or likely to be affected by the dispute 23.

The decision of the arbitrator shall be binding on us.

The arbitrator shall make his award within the period of 60 (sixty) days or within such further time as is extended by mutual agreement between us in writing. In case the Award is not made within the period above mentioned, the reference to arbitration shall automatically be cancelled and we shall be free to negotiate for fresh arbitration.

Signature of the parties

(Sd.) M. L. MATTO,
Agent, Pure Samla Colliery
of M/s. Pure Samla Coal Co. (P) Ltd. .
P.O. Nutandanga, (Burdwan)
Representing Employer
Witnesses (1) Sd./- Illigible

(Sd.) B. N. TEWARI,
General Secretary
Colliery Mazdoor Sabha
P O. Asansol, (Burdwan)
Representing the Workmen
(2) Sd./- Illigible
[No. 6/26/69-LRII.]
BALWANT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 14th May 1969

S.O. 2047.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, Dhanbad in the Industrial Dispute between the employers in relation to M/s. A.C.C. Ltd., and their workmen, which was received by the Central Government on 9th May, 1969.

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT DHANBAD

In the matter of a reference under section 10(1A) of the Industrial Disputes Act, 1947.

N. T. REFERENCE No. 7 OF 1967

PARTIES.

The Associated Cement Companies Ltd., Bombay.

AND

Their Workmen.

PRESENT:

Shri Kamla Sahai.—Presiding Officer.

APPEARANCES:

For the Employers—Shri R. J. Kolloh, Advocate with S|Shri S. N. Cooper and G. L. Govil.

For the Workmen.—Shri C. L. Duhdia, Advocate.

Indian National Cement Workers' Federation:

All India Cement Workers Federation.—Shri P. D. Gandhi, Joint Secretary, Shri Dharadhar, General Secretary, and Mrs. Mehta, Advocate.

STATE: Maharashtra

INDUSTRY: Cement

Dated the 25th April, 1969

AWARD

By its order No. 17/5/66-LRIV dated the 19th October, 1966, the Central Government, in the Ministry of Labour, Employment and Rehabilitation, made this reference to the National Tribunal at Bombay for adjudication of the dispute described in the schedule as follows:—

SCHEDULE

"In respect of the workmen employed in the Head Office, Branches and Works including Quarries what quantum of bonus should be paid for the years 1962-63, 1963-64 and 1964-65?"

2. It was numbered in the Bombay Tribunal as reference No. 2(NT) of 1967. By the Ministry's order No. 17/4/67 LRIII dated the 5th December, 1967, the reference was transferred to the National Tribunal at Dhanbad with me as the Presiding Officer.

3. I have heard the parties relating to the dispute as to the bonus payable to the workmen for the year 1964-65. I have not yet given my award in respect of the bonus for that year and it is still pending. The parties have, however, filed a compromise petition, settling their dispute as to bonus for the years 1962-63 and 1963-64. There was a keen contest as to whether the settlement which was supported by the management of the company as well as the Indian National Cement Workers Federation and various unions affiliated to that Federation but was opposed by one section of the Mancherial Cement Workers Employees Union was a full and final settlement between the parties.

4. Shri Raghu Ramulu, appeared on behalf of that union and contested the fact of settlement between the management and the workmen of the companies. After contesting the settlement for sometime, Shri Raghu Ramulu withdrew his objection. Thereafter, Shri Ramchandran appeared and started contesting the settlement. I called upon the parties to adduce evidence on the question of settlement. I directed the Mancherial union to give a list of the witnesses as also the names of the Factories about which it stated that a settlement had not been arrived at. I also directed the union to give a copy of the list of witness to the company which was directed to file its own list of witnesses within 15 days after the union filed its list of witnesses. I also said that the concerned union should exchange affidavits of its own witnesses with the affidavits of the companies' witnesses and that both parties should keep their witnesses ready at the time of hearing for cross-examination today in Bombay. At the last hearing, the union filed a list of five witnesses but said that it would file another list. It did not file any such list. No witness is present on behalf of the union to support the allegation that the settlement alleged by the management and the Indian National Cement Workers Federation has not been finalised. Shri G. Sanjivayya Reddy, President of the Mancherial Cement Works Employees Union, has appeared today with a letter from Shri Ramchandran. By that letter, Shri Ramchandran has withdrawn his opposition to the settlement between the parties and has prayed that an award be made in terms of that settlement. In view of this fact and the attitude that Shri Ramchandran has now taken, Shri J. U. Bellani, Advocate, appearing on behalf of Mrs. Mehta who has been so far appearing on behalf of the All India Cement Workers Federation as well as Shri Dharadhar the General Secretary of that Federation, have stated that there is no longer any opposition to the settlement.

5. There is thus, no longer any one to allege that the alleged settlement is not full and final. The unions affiliated to the Indian National Cement Workers Federation have ratified the settlement and other unions have entered into separate settlements with the company in terms identical to those on which the Federation arrived at the settlement.

6. I consider the settlement to be fair. In accordance with the prayer made before me, therefore, I give an award, as prayed for, in accordance with the settlement dated the 27th September, 1967 which will form part of the award.

This disposes of a part of the reference i.e., to the extent of bonus for the years 1962-63 and 1963-64.

7. Let a copy of this award be submitted to the Central Government under section 15 of the Industrial Disputes Act. The award for the bonus payable for 1964-65 will follow.

(Sd.) KAMLA SAHAI,
Presiding Officer.

(Original settlement signed on Rupees Three & Fifty paise Stamp paper).

Settlement under section 2(p), 18(1) and 19 of the Industrial Disputes Act, 1947, as Amended upto date.

Name of Parties:

1. The Associated Cement Companies Limited, Bombay
Represented by—Mr. K. R. Coorlawala, Personnel Director

AND

2. The Workmen employed by the Associated Cement Companies Limited, at their various factories:

Represented by—Mr. H. N. Trivedi, President, Indian National Cement Workers Federation.

Short recital of the case

Whereas the Associated Cement Companies Limited (hereinafter called "the ACC" or 'the Company) and its workmen at different units in the country have desired to settle disputes by negotiation;

Whereas in this tradition all bonus disputes upto and including the year 1961-62 have been so settled;

Whereas the ACC had declared bonus for the years 1962-63 and 1963-64 at the following rates:—

1962-63 2 months' basic salary/wages.

1963-64 1.8 month's basic salary/wages.

Whereas the workmen though they accepted and received the bonus under protest and without prejudice but not being satisfied raised disputes;

Whereas these disputes together with the disputes for bonus for 1964-65 have been referred to adjudication and have been pending before the National Tribunal at Bombay and have been marked as Ref. No. 2 (NT.) of 1966;

Whereas the parties wish to settle the disputes for the years 1962-1963 and 1963-1964;

Now therefore in pursuance of the desire for settlement and in line with tradition, the workmen represented by the Indian National Cement Workers' Federation, enter into the following settlement:—

Settlement

1 In addition to the bonus declared by the Company and received by the workmen, the Company will pay additional bonus as follows:—

Year	Bonus already declared and received	Additional Bonus
1962-63	2 months' basic salary/wages	6 days Basic salary/wages
1963-64	1.8 months' basic salary/wages	9 days Basic salary/wages

2. The said bonus will be paid on the usual terms and conditions on which the bonus already declared and received for the concerned years has been paid, on ratification by the Union or Unions affiliated to the Indian National Cement Workers' Federation operating at the Works.

3. The additional bonus is being paid and is being accepted in full settlement against present and future claims regarding bonus for these two years, viz. 1962-63 and 1963-64.

4. In consideration of this, the parties will apply to the National Tribunal, Bombay for passing an award in terms of this Settlement in Reference No. 2 (NT.) of 1966 in so far as the disputes for the years 1962-63 and 1963-64 are concerned.

5. One copy of this settlement will be sent to all the concerned Labour Authorities of the Central and the State Governments.
Dated. at Bombay this 27th day of September, 1967.

For & on behalf of the
Associated Cement Cos. Ltd.

For & on behalf of the
Indian National Cement
Workers' Federation.

Sd./- K. R. COORLAWALA,
Personnel Director

Sd./- H. N. TRIVEDI,
President.

Witnesses:

1. Sd./- R. H. RANGA RAU,
2. Sd./- G. L. GOVIL,

1. Sd./- R. G. DESHPANDE,
2. Sd./- G. Y. SAMAYAJULU.
[No. 17/5/66/LRIV.]

New Delhi, the 15th May 1969

S.O. 2048.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the management of Ghatkuri Iron Ore Mines of Messrs Rungta Mines (Private) Limited, Post Office Gua, District Singhbhum, and their workmen, which was received by the Central Government on the 8th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD

REFERENCE NO. 2 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L, Presiding Officer.

PARTIES:

Employers in relation to the Ghatkuri Iron Ore Mines of Messrs Rungta Mines (P) Ltd.

Versus

Their workmen.

APPEARANCES.

For employers.—Sri S. S. Mukherjee, Advocate

For workmen.—Shri C. S. Mukherjee, Vice President, U.M.W. Union.

INDUSTRY: Iron Ore

STATE: Bihar.

Dhanbad, dated the 24th of April, 1969

AWARD

1. The Central Government in the Ministry of Labour, Employment and Rehabilitation by their order No. 37/3/68-LRI dated the 16th of July, 1968 have referred to this tribunal under section 10(1)(d) of the Industrial Disputes Act, 1947 an industrial dispute existing between the employers in relation to the Management of Ghatkuri Iron Ore Mines of Messrs Rungta Mines (P) Ltd., Post Office Gua, District Singhbhum and their workmen in respect of the matter specified in the schedule annexed thereto. The Schedule is extracted below:—

SCHEDULE

“Whether the management of Ghatkuri Iron Ore Mines of Messrs Rungta Mines (Private) Limited was justified in not granting wages as per the final recommendations of the Central Wage Board for Iron Ore Industry payable with effect from the 1st January, 1967?

If not, to what relief are the workmen entitled?”

2. The Secretary, United Mineral Worker's Union filed the written statement on the 17th of August, 1968 on behalf of the workmen. Their case is that the management has not yet implemented the Central Wages Board (for Iron Ore Mining

Industry) final award that has been accepted and declared by the Central Government in June, 1967 in spite of the fact that the union and the workmen made several representations to the management for implementing the same. According to the union the Wage Board had taken into consideration the financial condition of the management and the financial implication of the recommendations on the industry and that recommendations of the Wage Board are justified and are based on sound considerations and therefore, the refusal to implement the wage Board recommendations is *mala fide* and unjustified. It is also alleged in the written statement that the management has not yet implemented the first and second interim wage increases awards of the Central Wage Board for Iron Ore Mining Industry. It was further alleged that 4 seers of concessional rice at Rs. 1.37 has been stopped from the middle of March, 1967 in spite of protest from workmen. The union therefore, prayed that the management be asked to implement the financial recommendations of the Wage Board with effect from the 1st of January, 1967 and be also asked to pay the arrears of 1st and 2nd interim Wage Board increase immediately and that the concessional rice be issued as before.

3. The employers filed the written statement on 2nd September 1968. Their case is that a substantial portion of the entire production of Iron Ore in the State of Bihar and Orissa is exported outside India. For the purposes of export these ores are purchased by Minerals and Metals Trading Corporation of India Limited, which is a Government of India undertaking. The said Corporation are alone authorised and empowered to export Iron Ore outside India. Apart from exporting Iron Ore outside India the corporation also supply Iron Ore to Public Sector undertakings, and various steel plants of M/s. Hindustan Steel Ltd. at different places by purchasing iron ore from this management and other mine owners.

4. Recently a policy appears to have been started by Messrs Hindustan Steel Limited to route all their purchases through Minerals & Metals Trading Corporation Ltd. The M.M.T.C. has thus for all practical purposes a complete control over Iron Ore, fixes the price from time to time in accordance with their own discretion. Any mine owner who desires to sell Iron Ore to the said Corporation has to supply them at the price fixed by M.M.T.C.

5. The Central Wage Board for Iron Ore Mines made two interim reports during the course of their deliberation. According to the 1st interim reports dated 5th February 1964 there was substantial increase in the wages, payable to workmen and the incidence of such increase was that the cost of production of Iron Ore went up. On representation being made to the M.M.T.C. the purchases price of iron ore was increased. The Central Wage Board subsequently made the second interim report dated 12th August 1966, whereby also there was substantial increase in the wages payable to the workmen. The effect of the said report or recommendation of the Wage Board was, that the cost of production of iron ore again went up. The mine owners including the present management made representation to M.M.T.C. for suitable increase in the purchase price. After consideration of the entire position the M.M.T.C. increased the purchase price of iron ore with effect from July, 1966. This shows that the Government of India recognised the fact that it was beyond the capacity of the management to implement the interim recommendation unless there was an increase in the purchase price granted by the M.M.T.C.

6. The Wage Board made its final recommendation in February, 1967. The effect of the said final recommendation of wage Board would be to increase the cost of production of iron ore by about another Rs. 5.92 per tonne over and above the previous increases. It was therefore, urged on behalf of the management that with the present purchase price obtained from the principal buyers namely M.M.T.C. and M/s. Hindustan Steel Ltd., it is not possible to implement the Wage Board Recommendation. According to them unless M.M.T.C. makes a reasonable price increase the implementation of the Wage Board recommendation is not possible.

7. In brief the case of the management is that the management is not in a position to bear the burden of Wage Board recommendation till the price of the ore is suitably increased by M.M.T.C. and other suppliers.

8. Matter arising out the interim wage increase and restoration of concessional rice are outside the scope of the present reference.

9. The employers have examined one witness (MW-1) Sri R. C. B. Srivastava, their Chief Mining Engineer. He has proved the Wage sheets (Ext. M-1). On behalf of the workmen two witnesses have been examined viz. Sri Badn Munda (WW-1) and Francis (WW-2).

10. The United Mineral Worker's union in their written statement have raised the dispute regarding the first and second interim increases of the Wage Board recommendation and they have also raised dispute regarding restoration of the supply of concessional rice. But they are outside the scope of the present reference.

11. In construing the terms of the reference and in determining its scope the tribunal must look at the order of reference itself. The award must be confined strictly to the terms of the reference and must never extend beyond those terms.

12. In the instant case we have to consider only the justification of the management in not granting wages as per the final recommendation of the Central Wage Board for Iron Ore Industry payable with effect from the 1st January, 1967. Therefore, the point for consideration is whether the management was justified in not implementing the final recommendation of the Wage Board.

13. The stand taken by the management before me is that the management has agreed to implement the recommendations of the Wage Board with effect from the first January, 1967. According to the management in their written statement they had expressed their inability to implement the Wage Board recommendation mainly on the ground that there was no increase of price by the M.M.T.C. But since then the M.M.T.C. have agreed to bear the part of the impact that will accrue on the implementation of the final recommendation of the Wage Board for the Iron Ore Mining Industry.

14. MW-1 Sri R. C. B. Srivastava has filed the wage sheet (Ext. M-1) showing that the final recommendation of the Wage Board has been implemented. He has further stated in his evidence that even the arrears have been paid according to the final recommendation of the Wage Board upto 30th September, 1968.

15. The further stand of the management is that they have negotiated the dispute regarding implementation of the Wage Board recommendation with Singhbhum Khan Mazdoor Panchayat and they have come to a settlement and that the same may be accepted and an award in terms of the joint settlement may be passed. This was objected to by United Mineral Workers' Union which espoused the cause of the workmen and which is a party to the proceeding. It was submitted before me that Singhbhum Khan Mazdoor Panchayat has got no locus standi to settle the dispute and that the Singhbhum Khan Mazdoor Panchayat cannot enter into settlement with the management since it was not a party to the dispute. It was submitted before me on behalf of the United Mineral Workers' Union that there was differences of opinion regarding interpretation and details of implementation as given in the settlement entered between the employers and the Singhbhum Khan Mazdoor Panchayat specially in respect to the categorisation of the workmen and work load. Therefore, it was submitted before me that it will not be proper to enforce the settlement since it is also not just and equitable and beyond the scope of the reference. The Singhbhum Khan Mazdoor Panchayat is not a party to the dispute and moreover a settlement with this union will be a settlement only with one section of the workmen. The compromise can only bind those who are party to it. The Singhbhum Khan Mazdoor Panchayat is not a party to the dispute. It is therefore, not possible to adopt this compromise as it would not be proper one from the point of the entire workmen. Therefore, I am not prepared to adopt the compromise entered into by the management and the Singhbhum Khan Mazdoor Panchayat.

16. In this case I find that the management has agreed to implement the recommendation of the Wage Board recommendation for Iron ore Mining Industry with effect from the 1st January, 1967. The evidence of MW-1 shows that final recommendation of the Wage Board has been implemented and the piece rated workers are being paid wages according to the final recommendation of the Wage Board and that even arrears have been paid upto 30th September, 1968. Therefore, no dispute exists between the parties regarding the implementation of the final Wage Board recommendation for the Iron Ore Mining Industry payable with effect from the 1st of January, 1967 and I record a 'NO DISPUTE' award between the parties.

17. This is my award. It may be submitted to the Central Government under section 13 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer.

[No. 37/3/68-LRI.]

S.O. 2049.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the matter of an application under section 33A of the said Act from Shri Baldeo prasad Verma C/o the General Secretary, Choona Mazdoor Sangh, Maihar, which was received by the Central Government on the 8th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR

Dated : 25th April, 1969

PRESENT:

Shri G. C. Agarwala, Presiding Officer.

CASE NO. CGIT/LC(A) (14) OF 1968 (U/S 33-A I.D. ACT)

PARTIES:

Shri Baldeo Prasad Verma C/o The General Secretary, Choona Mazdoor Sangh, Maihar—Applicant.

vs.

Messrs. Diwan Lime Company, Maihar—Opposite Party.

CASE NO. CGIT/LC(B) (6) OF 1969 (U/S 33(2) (b) I.D. ACT)

PARTIES:

Messrs. Diwan Lime Company, 1/1, Deshbhandu Gupta Road, New Delhi—Applicant.

vs.

Shri Baldeo Prasad Verma C/o The General Secretary, Choona Mazdoor Sangh, Maihar—Opposite Party.

APPEARANCES:

For Applicant—Shri R. D. Nigam, General Secretary, Choona Mazdoor Sangh, Maihar.

Opposite Party—Shri R. N. Rai, Officers of the Association of Industrial and Commercial Employers, New Delhi.

DISTRICT : Satna (M.P.).

ORDER

These are two cases between the same parties and arise out of one and the same transactions. Facts being short and simple are as follows :

The complainant in Case No. 14 of 68 under Section 33-A is Shri Baldeo Prasad Verma who was employed at the Maihar Office of the opposite party Messrs. Diwan Lime Company, Maihar as an Accountant or Accounting Clerk. The head office of the company is at Delhi. The company is owned by a trust known as Diwan Chand Trust. In early June, 1968 the complainant was called to Delhi Head Office for reconciliation of accounts. On 10th of June, 1968 he wanted to go back to his home at Maihar but as some work was outstanding he remained their till 17th June, 1968. On his representing that his mother was seriously ill he was allowed to go on leave on 17th June, 1968 even though, according to the management, he had not completed the entire work entrusted to him and had refused to accept a letter dated 17th June, 1968 to that effect. A registered letter, dated 19th June, 1968, however, was then sent to him drawing his attention to the lapses. Be that as it may, the complainant remained on leave till 31st August, 1968, he having sent applications on the ground of his own illness which was stated to be Tuberculosis and in support of which he had sent a medical certificate. The General Manager of the company at Delhi, Shri A. K. Juhar intimated that he would be permitted to rejoin only on furnishing certificate of fitness from a qualified doctor. The complainant appeared at Head Office Delhi on 2nd September, 1968 as 1st September, 1968 was Sunday and produced a medical certificate of a doctor which was not considered sufficient by the General Manager. He directed that the applicant should subject himself to medical examination by Chief Medical Officer of a Government hospital or a Civil Surgeon and the company was prepared to meet expenses. The complainant

was not prepared to comply with that order and there is difference of versions about subsequent happening between the management and the complainant. According to the complainant, he was neither allowed to rejoin at the Head Office Delhi nor at the original office of employment at Maihar. He sent various communications to the management and three of these letters dated 3rd September 1968, 25th September, 1968 and 2nd October, 1968 contain certain passages which the management considered to be derogatory and insulting. The management, therefore, chargedsheeted the complainant by Charge-sheet dated 29th October 1968 and ordered a domestic enquiry to be conducted by Shri B. D. Kalia who is incharge of Diwan Lime Company with its various units at Maihar, Jukehi Satna and Katni. He conducted the enquiry proceedings on 18th November, 1968 and submitted a report. Before, however, an order of dismissal was recorded which was made on 1st February, 1969 by the Secretary of the Trust, Shri Hansraj Gupta, the complainant filed this application under Section 33-A I.D. Act because of pendency of two reference cases Nos. 49 and 50 of 1968 on the grounds that there has been a breach of Section 33 on the part of the management and he was a concerned workman in the reference cases. The management filed a reply and took preliminary objections that there was no termination of service for misconduct and subsequently Section 33 was not attracted. It was also disputed that the complainant was a concerned workman in the reference cases Nos. 49 and 50 of 1968 pending before this Tribunal. Another preliminary objection taken was that the court has no jurisdiction because of the cause of action arose at Delhi. On merits also, on basis of facts broadly stated above, the application was opposed though it was also contended that the management was still prepared to allow the complainant to resume duty on furnishing the medical certificate as required and which was quite a justified condition on their part.

After the application had been filed by the complainant and the management decided to dismiss him on 1st February, 1969 as a result of domestic enquiry for charges of using derogatory language, they filed the application for approval under section 33(2) (b) on 1st February, 1969. In para 16 of the application it was stated that the company was moving the application by way of abundant caution and without admitting that the employee was a concerned workman. This obviously was based on the authority of the Supreme Court Case Tata Iron and Steel Co. vs. D. R. Singh reported in 1965-II-LLJ p. 122. Baldeo Prasad Verma opposed the application and filed a reply. In case under Section 33-A [Case No. (A)(14)/68] issues were framed on hearing rendered on 17th March, 1969. No issues were framed in the case under Section 33(2)(b) [Case No. (B)(6)/69]. When the hearing commenced on 10th April, 1969, since both the cases were found to relate to one transaction and the parties were common, they were ordered to be consolidated and Case No. 14 of 1968 under Section 33-A was made the leading case. After evidence had been recorded, both oral and documentary, adjournment was allowed to the management for producing one witness Shri A. K. Jauhar, the General Manager, which the management did on 23rd April, 1969. After the evidence was concluded and the arguments were heard on that date, case was adjourned for hearing of arguments on the following date viz., 24th April, 1969. Before the arguments were, however, concluded the management filed an application withdrawing their application under Section 33(2)(b) as they thought that Section 33 was not attracted. A party has a fundamental right to withdraw his application and the Tribunal has no power no compel him not to do so. There is nothing in law to prevent an employer from withdrawing his application made under proviso to Section 33(2)(b) when the employer finds that the application had been made under a mis-apprehension (*vide* Burrakar Coal Co. Ltd. vs. Gurbachan Singh—XXV-FJR p. 249). That being so, there is no necessity left to determine the question of charge-sheet dated 25th October, 1968 and subsequent action of the management in dismissing Baldeo Prasad Verma. The determination is now confined to the case of the complainant Verma under Section 33-A. It is needless to reproduce all the issues framed in the case as on two preliminary objections only the complaint falls.

In the first place, even assuming all the averments made by the complainant in the complaint to be correct, it is manifest that there had been no punishment, dismissal or discharge by mere refusal of the management to take him back on duty. He had not been dismissed at all. In none of the communications of the management, they treated the absence and non-compliance with the order to submit the medical certificate of the Chief Medical Officer or Civil Surgeon as tantamount to disobedience of order and in consequence thereof to treat the absence as termination. As a matter of fact, for refusal to comply with the

order, Verma was not chargesheeted at all. He was chargesheeted and dismissed subsequently on the basis of some language used by him in some of his communications, a question which does not arise for consideration now as the management have withdrawn their application under Section 33(2)(b) I.D. Act. When there has been no punishment for any misconduct, whether by dismissal or otherwise, Section 33(2)(b) I.D. Act is not attracted. All what the management did was to insist on medical examination by Chief Medical Officer of a hospital or Civil Surgeon at their expense. Whether this was justified or not is not a matter to be considered in these proceedings. All that has to be seen is whether there has really been any termination by way of punishment or discharge or dismissal for any misconduct. This, on the facts as stated by the complainant himself, is not the case here. Even if he had been suspended for non-compliance of the order, that would not have been treated as a punishment so as to attract Section 33(2)(b) I.D. Act as held by the Hon'ble Supreme Court in the case, Sasamusa Sugar Mills Pvt. Ltd. Vs. Subarati Khan--A.I.R. 1959 (S.C.) p. 923. This is one aspect of the matter.

Another fact which the complainant Verma failed to establish was that he was a concerned workman in reference cases Nos. 49 and 50 of 68. Case No. CGIT/LC(R)(50) of 68 is irrelevant as the company, M/s. Diwan Lime Company is not in the schedule of employers. Case No. CGIT/LC(R)(49) of 68, however, has a bearing as the dispute in that case which relates to the grant of interim relief as recommended by the Wage Board, is between workers in relation to quarries of the management of employers mentioned in the schedule. M/s. Diwan Lime Company is one of the employers. The dispute in that case was raised by Choona Mazdoor Sangh but unless it could be shown that Verma was member of the union when demand was made and also when reference was made he would not be a concerned workman. The record of case No. 49 of 68 would show that the union raised the demand in December, 66 and the reference was made on 3rd September, 68. Verma had to establish that he had a substantiating interest by remaining a member of the union both at the time of demand and reference. He gave no evidence on the point. No document was filed to show that he had been a member of the union at the relevant time. Even in his statement he said nothing on the point. After cross-examination was over the Tribunal questioned him on the subject and in reply to which he stated that he was a member of the union, Choona Mazdoor Sangh from 1963-66. He stated that he still was a member of the union but admitted that he sometimes defaulted in paying subscription. In the absence of any proof that he was a member of the union at the relevant time, namely when the demand was made as also when reference was made in reference Case No. 49 of 68, he cannot be held to have been a concerned workman in the reference, especially so when the reference relates to workers in the quarries by the employers. It was for him to have established how he was a concerned workman. Having failed to do so, the complaint is not maintainable.

Decision.—The result is that Case No. CGIT/LC(B)(6) of 69 under Section 33(2)(b) is dismissed for want of prosecution on the part of the company. Case No. CGIT/LC(A)(14) of 68 under Section 33-A filed by Shri Baldeo Prasad Verma against the company is also dismissed as Section 33 I.D. Act is not attracted.

No order for casts.

(Sd.) G. C. AGARWALA,
Presiding Officer.
25-4-1969.
[No. 36/17/69-LRI.]

S.O. 2050.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the management of Messrs Indian Lapso Kyanite Mine of Messrs Indian Copper Corporation Limited, Ghatsila and their workmen, which was received by the Central Government on the 12th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 10 OF 1968

PARTIES:

Employers in relation to Lapso Kyanite Mine of M/s. Indian Copper Corporation Ltd., Ghatsila.

AND

Their workmen.

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES:

For the Employers.—Shri K. C. Goel, Legal Officer.

For the Workmen.—Shri Mahendra Lal Soy, Asstt. Secretary, Mine Workers Union, Bihar.

STATE: Bihar.

INDUSTRY: Kyanite.

Delhi, dated the 30th April, 1969

AWARD

The Ministry of Labour, Employment and Rehabilitation of the Government of India has made this reference *vide* its order No. 24/36/66-LRI dated the 9th September, 1966 to this Tribunal for adjudication of an industrial dispute described in the schedule attached to the reference as follows:—

SCHEDULE

"Whether the action of the management of the Lapso Kyanite Mine of Messrs Indian Copper Corporation Limited, Post Office, Ghatsila, in dismissing 8 workmen as per list given below, from service with effect from the 2nd June, 1966 amounts to an act of victimisation. If so, to what relief are the workmen entitled?

List of workmen.

1. Shri Moti Singh—B. No. 1469.
2. Smt. Birang—B. No. 1090.
3. Smt. Chandmoni—B. No. 1108.
4. Shri Sukra—B. No. 580.
5. Shri Songaram—B. No. 2101.
6. Shri Raghu—B. No. 675.
7. Shri Tanko—B. No. 1480.
8. Shri Gopi—B. No. 1007.

2. After the reference was made to this Tribunal, the Ministry transferred it to the Tribunal at Jabalpur *vide* its order No. 8/25/67-LR-II dated the 25th April, 1967, where it was numbered as Adj. Reference No. 89 of 1967. Thereafter, the reference was again transferred to this Tribunal as per the Ministry's order No. 24/36/66-LRI dated the 3rd February, 1968. On receipt of the reference this time, it has been numbered as reference No. 10 of 1968.

3. It appears that this reference was originally made at the instance of the General Secretary, Mine Workers Union, Bihar, C/o. Mohbhandar Mazdoor Union, P. O. Ghatsila (Singhbhum). In spite of several efforts, the General Secretary of the Mine Workers Union, Bihar, has not appeared. Shri Mahendra Lal Soy has appeared instead. He claims to be the Asstt. Secretary of the Mine Workers Union, Bihar but Shri Goel has contested this statement on behalf of the management. All the concerned workers, however, expressed their wish to be represented by Shri Soy and they appeared to be members of the Lapso Group of Kyanite Mine Workers Union. Shri K. C. Goel showed a paper which bore the signature of Shri Soy in the capacity of the General Secretary of the Lapso Group of Kyanite

Mine Workers Union. I, therefore, permitted Shri Soy to represent the workers in question in this case.

4. The case against six of the workers namely, Sukra (B. No. 580), Songaram (B. No. 2101), Raghu (B. No. 675), Smt. Chandmani (B. No. 1108), Tanko (B. No. 1480), and Gopi (B. No. 1007) is that on 2nd May, 1966, at about 6-15 hours, they formed an unlawful assembly along with 20 other persons by blocking the road near the junction of two roads, one from the Indian Copper Corporation camp and another from Chandrapura Depo leading to the quarry, and that, further, they took leading part in obstructing vehicle No. BRT. 5899 and No. BRX-308 in which the Kyanite Superintendent, the Quarry Manager-cum-Asstt. Kyanite Superintendent, Welfare Officer and the Quarry Foreman were proceeding on work towards the Quarry. It was with a great deal of difficulty that they let the vehicle go.

5. The case against Shri Moti Singh and Smt. Birang, the other two workers, is that, at about 9-15 A.M. on the 2nd May, 1966, Moti Singh snatched away the Quarry Office keys from the hands of Shri Gulab Singh, Time Keeper, when he was handing them over to the Kyanite Superintendent and that in spite of being told by the Kyanite Superintendent to return the keys, he refused to do so and passed them on to Smt. Birang who also refused to return them.

6. All the eight workmen were served with charge-sheets on the 3rd May, 1966 on the basis of the allegations mentioned above. All the eight workmen submitted explanations in which they generally stated that they were on strike on the 2nd May, 1966, that they did not enter the company's premises on that date and that the provisions of the certified standing orders were, therefore, not applicable to them.

7. Shri K. C. Goel was appointed to be the enquiring Officer. In the enquiry against Moti Singh and Smt. Birang, Shri Tulsidas appeared on behalf of the company. He examined Shri S. A. Siddique, the Kyanite Superintendent and Shri Gulab Singh, Time keeper. Since neither of them was cross-examined by the two charged workmen, Shri Tulsidas closed the evidence, saying that the other witnesses would only corroborate the statement of these two witnesses and, since the first two witnesses were not cross-examined, it was unnecessary to examine other witnesses. In the enquiry against the other six workmen, Chandmani did not appear in spite of service of notice upon her twice. The other accused workmen were present. Witnesses were examined in their presence. None of them, however, cross-examined the witnesses. None of them gave his own statement or produced any witness. The evidence given before Shri Goel was interpreted by Shri Dularam Ho, a man who knows the Ho Language. He interpreted the evidence of witnesses given in Hindi in Ho language at the enquiry against Moti Singh and Smt. Birang. In the other enquiry, the interpreter was Shri Pradhan Gagrai who is now dead.

8. The accused workmen did not put their signatures or thumb impressions on the evidence of the witnesses which was recorded against them. They refused to do so on the ground that as Police proceedings had been started against them, they were not prepared to affix their signatures or Thumb Impressions. Their version before the Tribunal is that they did not put their signatures or thumb impressions because the records of the evidence were not read over to them by their own men. This seems to me to be obviously incorrect because it does not appear that they ever protested that the evidence against them should be interpreted by some one other than Pradhan Gagrai and Dularam Ho. It may be mentioned that both these men were employees of the company.

9. Three witnesses have been examined before me, two on behalf of the workmen and one on behalf of the management. One witness namely Dularam Ho has filed an affidavit, supporting the case of the management. He has been tendered and has been cross-examined by Shri Mahendralal Soy.

10. Ragho, W.W. 1 and Tanko, W.W. 2 are both workmen who have been dismissed. They are clearly interested witnesses. Ragho, W.W. 1, has stated that he stated to the management that he would not sign any paper without knowing what exactly was written on it. This is, however, falsified by the fact that he admits that he put his thumb impression upon the chargesheet and its reply without, as he says, understanding what reply was given on his behalf. He says that Shri Pradhan Gagrai was not present in the enquiry but he is contradicted by Shri Tanko, W.W. 2. Ragho says that he gave a reply to the chargesheet on the instruction of his union but as I have just mentioned, he has said that he gave his

thumb impression on the reply to the charge-sheet without understanding its contexts. The fact that an enquiry was undoubtedly held by Shri Goel is proved by the admission of Shri Tanko himself when he says that Shri Goel put questions to him and asked him whether he had obstructed the progress of the car and he replied that he had not obstructed it. Tanko says that no one explained the evidence to him but this must be incorrect because Dularam Ho as well as Shri K. C. Goel have said that the evidence was interpreted to the accused workmen. Tanko admits that, when he was asked to cross-examine witnesses, he said that he had nothing to say. Having carefully considered the evidence adduced on behalf of the workmen, I am not prepared to believe it. On the other hand, there seems to be no reason to disbelieve the evidence of Shri K. C. Goel or Shri Dularam Ho.

11. It is note-worthy that the words of the reference in this case place the onus of proving victimisation upon the workmen. I do not think that I could have come to a finding in favour of the workmen even if this had been a case of a reference in which the management had been asked to justify the dismissal of the workmen. But the wording of the reference being as it is, it is even more difficult to come to a conclusion in favour of the workmen.

12. I am satisfied that Shri Goel's enquiry was regular and legal. His conclusion that the workmen were guilty was also justified. In these circumstance, I hold that the action of the management of the Lapso Kyanite Mine of M/s. Indian Copper Corporation Limited in dismissing eight workmen in accordance with the list given in the schedule does not amount to an act of victimisation. The workmen are, therefore, not entitled to any relief.

13. This is my award. Let a copy of this award be sent to the Central Government under section 15 of the Industrial Disputes Act.

(Sd.) KAMLA SABAI,
Presiding Officer.
[No. 24/36/66-LRI.]

S.O. 2051.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Delhi in the Industrial Dispute between the employers in relation to the Ruby General Insurance Company Ltd., Delhi and their workmen, which was received by the Central Government on 9th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DELHI
PRESENT:

Shri R. K. Baweja, Central Government Industrial Tribunal, Delhi.
19th April, 1969

C.G.I.D. No. 6 OF 1968

BETWEEN

The employers in relation to the Ruby General Insurance Company Ltd., Delhi,

AND

Their workman.

Shri Harish Chandra—for the management.
Shri Avtar Singh—for the workman.

AWARD

Vide Order No. 25/16/68/LR. III. dated the 26th July, 1968, the Central Government, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following industrial dispute existing between the employers in relation to the Ruby General Insurance Company Ltd., Delhi and their workman for adjudication to this Tribunal:—

"Whether action of the management of the Ruby General Insurance Company Limited, Delhi in terminating the employment of Shri P. P. Chopra with effect from the 17th July, 1967 was justified? If not, to what relief is he entitled?"

2. In the statement of claim filed by the workman, it was alleged that in pursuance of an advertisement given by the management in the Hindustan Times for the post of Stenographer in its office at Delhi, he submitted an application on the same day and thereafter he was called for interview on the 24th of May, 1966. He satisfied the management with regard to his proficiency in Stenography and requested it that he wanted to be absorbed permanently and not for one year and that his name may be considered only if this request was acceded. The management, it is stated, appreciated his point and told him that it would refer the matter to its head office at Calcutta. After sometime, he received another communication dated 23rd of June, 1966 from the management informing him that it had received a reply to the above effect from the head office and that he should attend its office immediately. He attended and it is alleged that it informed him that the head office had given up the idea of keeping him for only one year and that he would be engaged permanently. Thereafter, he joined as Stenographer on the 18th of July, 1966 at a monthly salary of Rs. 307. No letter of appointment was issued to him and towards the end of March, 1967 he requested it to give him the same. The management hesitated and the workman took up the matter regarding the issuance of the appointment letters with the Delhi Administration in the department of labour. The Inspector under the Delhi Shops and Establishments Act checked the establishment of the management and directed it to issue the letters of appointment to its employees as required under the said Act. It was thus compelled by the labour authorities to issue appointment letters to its employees including the concerned workman. The concerned workman received the appointment letter only on the 26th June, 1967. It is alleged by the workman that the management got annoyed on account of this and illegally, arbitrarily and in a mala fide manner dispensed with his services on the 17th of July, 1967, to which he protested. It was stated that this manner of dispensing with his services without holding an enquiry or giving him a show-cause notice was violative of the principles of natural justice and was void. He, therefore, prayed that he be reinstated with full back wages and all the benefits to which he was entitled.

3. The management in its written statement admitted that he was employed with effect from the 18th of July, 1966 but it was added that he was on probation for twelve months. The terms and conditions of his appointment which were in keeping with the staff rules as then in force were accepted by him in writing inasmuch as he signed an application form and his appointment was made in terms thereof. It was further averred that on the completion of his period of probation, the management in the exercise of its right was competent to terminate his services without holding an enquiry or issuing a show-cause notice. The allegation that he had been victimised out of anger or in any mala fide manner was denied.

4. I may mention at the very outset that formerly this dispute was referred for adjudication to the Labour Court, Delhi by the Delhi Administration. As the management raised a technical objection there that the appropriate Government to refer the dispute was the Central Government and not the Delhi Administration, it was withdrawn by the workman and it was conceded that this withdrawal did not debar the Central Government, in any manner, to refer the same industrial dispute to this Tribunal.

5. It is not disputed that the management gave an advertisement in the Hindustan Times on the 1st of May, 1966 for the post of Stenographer, though a copy of that advertisement has not been placed on the record. In pursuance thereto, the concerned workman submitted an application to the management for the said post. He was called for interview by it on the 21st of May, 1966 vide Ext. W/1. There, it is stated, he requested the officers who interviewed him that he might be considered for permanent absorption and not for a period of one year, though this is denied by Shri G. S. Pangharia, regional accountant who appeared as MW1 for the management. There is nothing to show that such a request was made in writing by the workman, but the fact remains that as a result of the interview on the 24th of May, 1966, some matter was referred to the head office as is indicated in the communication dated 23rd of June, 1966 sent by it to the workman, a copy of which has been placed on the record as Ext. W/2. On the 14th of July, 1966 another communication Ext. W/3 was received by him to attend its office immediately in connection with his appointment. The workman states that he attended the office and then he was appointed as Stenographer on the 18th of July, 1966 and he was told that his appointment was permanent. It is admitted that no letter of appointment was issued to him. The correspondence which took place between the regional manager and the head office about

the appointment of the workman has not been placed on the record. The contention of the workman is that in that correspondance the regional manager sought the approval of the head office to his appointment on permanent basis and this is the matter of which a reference was made in Ext. W/2. On behalf of the management on the other hand it was argued that the approval which it sought from its head office was for his appointment on probation. The management has withheld that correspondence and so it can be safely presumed that it had produced that, it would have gone against it. If only the approval was to be sought from the head office about the appointment of the workman on probation, then it would have been so stated in the letter Ext. W/2 and the word "matter" would not have been used. Subsequently, on the 21st of July, 1966, a cyclostyled proforma was given to him and he was asked to sign it vide Ext. M/1. It relates to the terms and conditions of his appointment. In this also, it was nowhere mentioned that he was on probation for one year. In the meantime when no letter of appointment was issued to him about his permanent absorption, he became restive. He moved the office of the Labour Commissioner with the request that the management be directed to issue letters of appointment to its employees. In this connection, the correspondence which passed between him and the labour authorities may kindly be perused vide Exts. W/5, W/6, W/7, W/8 and W/9. He also wrote to the management on the 2nd of April, 1967 for the issuance of letter of appointment and for the first time in its reply dated 17th April, 1967, he was informed that he was appointed on probation for one year with effect from the 18th of July, 1966 vide Ext. M/5. The labour inspector took the case with the management and brought to its notice that under the Delhi Shops and Establishment Act, 1954 and the rules framed thereunder, the issuance of a letter of appointment was necessary. In obedience to that direction a letter of appointment was issued to him on the 26th of June, 1967 which is Ext. W/4. In this letter also, there is no mention that he had been appointed on probation for a period of one year. The learned counsel for the management contended that this letter of appointment was on a form prescribed under the Delhi Shops and Establishment Act, 1954 and the rules framed thereunder and as there was no column in the prescribed form to indicate if an employee was a probationer or a permanent one, this was not so mentioned. It is so, but under the said Act or the rules framed thereunder, it is not prohibited that an employee who is on probation cannot be shown as such. So neither in the letter of appointment nor in the terms and conditions of service which the workman signed or in the other correspondence before his appointment, he was shown as probationer. All this evidence lends support to the version of the workman that at the time of interview, he agreed to his being appointed with the management, provided he was absorbed permanently. That appears to be the correct position and has to be accepted.

6. My attention was drawn by the learned counsel for the management to the staff rules of which a copy has been placed on the file as Ext. M/2. Rule 5 of these rules provides that, an employee shall be on probation for a period of twelve months. In the terms and conditions of service Ext. M/1, it was nowhere mentioned that the appointment of the workman was subject to the staff rules. So, it cannot be said that he knew about the contents of these rules. Even if he knew about them, unless it was mentioned in the terms and conditions of his service which formed the basis of contract between him and the management, effect could not be given to them. Mere knowledge that the staff rules provide the appointment of an employee on probation at the start will not prove that he accepted that condition. On the other hand the evidence, as I have already discussed above, reveals that the employee at the very outset brought to the notice of the management that he should only be considered if his appointment was on permanent basis and not for a period of one year.

7. My attention was also drawn by the learned counsel for the management to copies of letters Exts. M/10 to M/42. The workman states that he was not paid any overtime dues though he was asked to do its private work not connected with its own affairs. He kept copies of the letters typed for the Sikanderia Works and other private work of the management and he states that on one of these documents Ext. W/10, the corrections are in the hand of the regional manager of the management. Vide his letter dated, the 2nd of April, 1967 he demanded remuneration for the extra work put in by him but he did not receive any reply. He states that this was also a cause of annoyance to the management because it did not like to pay him for the extra work which he did for the other concerns. Nothing was said by Shri G S P and Pangharia. MW1 in his statement but a suggestion was put to the workman in his cross-examination that he had removed these copies, (Exts. W/10 to W/44), from the files of the other employees

who were doing the extra work. If the workman had removed these copies from the files of his co-workers, they should have been produced by the management and a report should have been lodged with the police against the workman for committing a theft. So, to me it appears that while doing this extra work, the workman was clever enough to keep copies of the letters with him so that he would be able to claim overtime allowance. His demand for the overtime allowance coupled with his insistence for the issuance of the appointment letters to him and to his co-workers, seems to have annoyed the management and in order to victimise him, his services were terminated without even issuing a show-cause notice or holding an enquiry in spite of the fact that he was a permanent employee.

8. For the aforesaid reasons, I hold that the termination of his services was illegal, against the principles of natural justice, arbitrary and unjust. He is, therefore entitled to reinstatement with continuity of service. Regarding wages, he has admitted that for a few months he had been serving temporarily with M/s. Bhanamal Gulzarimal, for about fifteen days with M/s. Geo Miller and for about one month with M/s. Bushing Schimtz Private Limited. Keeping all the circumstances in consideration, I feel that he is entitled to half of the wages last drawn by him from the date of termination of his services upto the date he is reinstated. The award is made accordingly.

(Eight pages)

19th April, 1969.

(Sd.) R. K. BAWEJA,

Central Govt. Industrial Tribunal: Delhi.

[No. 25/16/68-LRIII.]

S.O. 2052—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the National and Grindlays Bank Limited and their workmen, which was received by the Central Government on the 7th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

REFERENCE No. 6 of 1969

PARTIES:

Employers in relation to the management of National and Grindlays Bank Ltd.,

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee .. Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri M. S. Bala, instructed by Shri A. Roychowdhury.

On behalf of Workmen.—Shri A. D. Singh, General Secretary, National & Grindlays Bank Staff Union.

STATE: West Bengal

INDUSTRY: BANKING

AWARD

By Order No. 23(53)/68-LR-III dated December 16, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following industrial dispute between the employers in relation to the Management of National and Grindlays Bank Limited, 41 Chowringhee Road Branch, Calcutta, and their workmen; to this tribunal, for adjudication, namely:

"Having regard to the provisions of para 20.7 of the Conciliation Settlement dated 19th October 1966 arrived at before the Chief Labour Commissioner (Central) New Delhi between the various Bank managements and their workmen whether the management of the National

and Grindlays Bank Limited, Calcutta, was justified in treating Sarvashri Rajeshwar Singh, Dhirendranath Pandey and Markandeya Singh, employed as sub-staff in the said Branch as casual workmen and paying them wages at the rate of Rs. 4 per day? If not, to what relief, are the workmen entitled?"

2. In the written statement, filed by the National & Grindlays Bank Staff Union, it was alleged that three workmen of the names of Rajeshwar Singh, Dhirendranath Pandey and Markandeya Singh were engaged as temporary employees, by the management of National and Grindlays Bank Limited at 41, Chowringhee Road Branch, from time to time, in leave vacancies of permanent staff of the subordinate cadre. Their services, it was alleged, were utilised in the performance of the normal duties of the permanent incumbents, who were on leave. Nevertheless, it was alleged in paragraph 3 of the written statement:

"That the management has adopted the discriminatory and unfair labour practice towards the employees under reference in respect of payment of salary. They have been paid at the rate of Rs. 4/- per day instead of approx Rs. 7/- per day on the basis of salary allowable to a new entrant in the bank in the subordinate cadre."

The aforesaid action of the management was characterised as violative of the provisions contained in paragraph 20.7 of bipartite settlement, dated October 19, 1966. On the aforesaid allegations the Union claimed;

- (i) Declaration that the concerned workmen were temporary workmen.
- (ii) Payment of difference of salary on the basis of the salary of a new entrant in the subordinate cadre as provided in the Settlement dated October 19, 1966 and the amount paid by the Bank.
- (iii) Any other benefit admissible to such temporary workmen.

3. The employer Bank also filed a written statement. In paragraph 1 of the written statement a two-fold preliminary objection was raised to the effect (i) the dispute was not an industrial dispute but an individual dispute, inasmuch as the trade union had no representative character and (ii) the persons on whose behalf the dispute was raised did not come under the definition of workmen under section 2(s) of the Industrial Disputes Act, 1947. In paragraph 2 of the written statement it was stated:

"***the entire case of the National and Grindlays Bank Staff Union as stated in their undated statement of claim is that the labour engaged by the Bank on a daily basis to meet emergencies arising from shortage of subordinate staff on certain days due to absence without notice or overstaying of leave, should be classified as "Temporary hands" in terms of Para 20.7 of the Settlement on the Industrial Disputes between certain Banking Companies and the workmen dated 19th October 1966 (known as the 'Bipartite Settlement')."

In paragraph 4 of the said written statement it was further stated:

"The bank submits that the Desai Award made a distinction between 'temporary employees' and 'casual workers' and 'job workers' in view of the fact that Para 21.20 of the aforesaid Award classifies different types of workmen, including 'Temporary workmen' who were subject to the terms and conditions under the Award whereas separate directions have been given with regard to 'casual workers' and 'job workers' in para 16.9 of the Award, wherein it has been laid down that these categories of employees are excluded from the operation of the Award. It is therefore respectfully submitted that casual or daily-rated workers are to be distinguished from temporary employees who are engaged for a specific period."

In paragraph 6 of the said written statement it was also stated:

"The Bank states that Sarvasree Rajeshwar Singh, Dhirendranath Pandey and Markandeya Singh were engaged by the Bank as daily-rated casual labour on particular days when some members of the subordinate staff were absent without notice or overstayed leave without prior intimation or permission. In these unforeseen circumstances, particularly in view of the fact that the number of absentee staff were expected to return to duty at any time, the Bank had little alternative but to engage casual labour at an agreed flat rate of Rs. 4 per day in order to cope with work which could not be left unattended."

On the aforesaid grounds, the Bank took up the position that the workmen were not entitled to any relief at all. On these pleadings, I have to decide the dispute referred to this tribunal.

4. Dhirendra Nath Pandey, one of the workmen whose case was referred to this Tribunal, has possibly settled the dispute with the employer Bank. His case was not represented by Mr A. D. Singh, General Secretary of the National and Grindlays Bank Staff Union. I, therefore, record, a 'no dispute' award between the said Dhirendranth Pandey and the employer Bank. Hereinafter I shall have to decide dispute in so far as it concerns Rajeshwar Singh and Markandeya Singh only.

5. I need first of all to take up for consideration the preliminary objections raised on behalf of the employer Bank. There is no dispute that there are two trade unions of workmen in the Bank, one is known as the National and Grindlays Bank Staff Union and other is known as National & Grindlays Bank Employees' Federation. V. Shivaraman, who deposed on behalf of the employer Bank, stated that there were about 285 persons employed as subordinate staff in the Chowringhee branch of the National and Grindlays Bank Ltd. and 99 percent of them were members of National and Grindlays Bank Employee's Federation. Only 10 to 15 persons were members of National and Grindlays Bank Staff Union. This statement is not disputed by A. D. Singh, General Secretary of the National and Grindlays Bank Staff Union. Mr. M. S. Bala, who appeared on behalf of the employer Bank, submitted that a substantial number of workmen had not espoused the cause of the two workmen concerned. Therefore, the dispute was not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. It is true that the trade union which has espoused the cause of the workmen represents the minority group of workmen. But that alone is not a matter of consequence. In the case of *Indian Cable Company Ltd. and its workmen* (1962) I LLJ 409 (at 415) the Supreme Court observed (per Venkatarama Ayyar, J.):

"No hard and fast rule can be laid down as to the number of workmen whose association will convert an individual dispute into an industrial dispute. That must depend on the facts of each case and nature of the dispute. The group might even be a minority, as held by this Court in *Associated Cement Co. Ltd. v their workmen*, 1960, I LIJ 491."

The view was reiterated by the Supreme Court (per Gajendragadkar, CJ) in *Workmen of Dharmpal Premchand (Saughandhi) and Dharmpal Premchand (Saughandhi)* (1965) I LLJ 668 (at 672):

"It is not disputed that the union of workmen may, validly raise a dispute as to dismissal even though it may be a union of the minority of workmen in the establishment."

There is nothing in the facts of the instant case which will go to show that the dispute raised was unworthy of being an industrial dispute. In the view expressed by the Supreme Court, I over-rule the first part of the preliminary objection raised by Mr. Bala, namely, that the cause of the concerned workmen not having had been espoused by the majority of the workmen should not be treated as an industrial dispute.

6. I turn now to the other part of the preliminary objection raised by Mr. Bala, namely, that Rajeshwar Singh and Markandeya Singh both being ex-workmen do not fall within the description of workmen, as in Section 2(s) of the Industrial Disputes Act and the dispute should not be treated as an industrial dispute but merely as an individual dispute. That the two workmen are now not in the employment of the employer Bank is not disputed. The dispute also is not over their termination of service but over the wages payable to them during their period of employment. Therefore, the dispute is not connected with the dismissal, discharge or retrenchment of the two workmen as contemplated under Section 2(s) of the Industrial Disputes Act. Section 2A of the Industrial Disputes Act also does not help. That section reads as follows:

"2A. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

It may be difficult to read a dispute over payment of wages as accommodated within the expression 'dispute or difference between workmen and his employer connected with or arising out of, discharge, dismissal, retrenchment or termination'. By a long series of decisions, it was established that an individual dispute would not *per se* be an industrial dispute but may become one if it be taken up by a substantial number of workmen. This position of law created hardship for individual workman, who were discharged, dismissed, retrenched or whose services were otherwise terminated, when they could not find the support of a trade union or of an appreciable number of workmen. Section 2A was enacted to do away with the requirement of espousal of an individual dispute by a trade union for converting it into an industrial dispute, in cases where a dispute arose out of discharge, dismissal, retrenchment or other termination of service of individual workman. This being the legal position, a dispute not over termination but over payment of wages during the period of employment does not come within Section 2A of the Industrial Disputes Act. I have, therefore, to hold that there may be a good deal of substance in the second branch of preliminary objection raised by Mr. Bala.

7. Mr. Bala raised a third preliminary objection, not pleaded in the written statement, which also requires consideration. He submitted that even if there had been a breach of the settlement arrived at between the Bank Managements and their Workmen on October 19, 1966, by the National & Grindlays Bank Ltd., such a breach would not *ipso facto* be an industrial dispute under Section 10 of the Industrial Disputes Act. He submitted that if more money was due to the concerned workman under the Settlement of October 19, 1966, they might apply under Section 33C of the Industrial Disputes Act but a reference under Section 10 of the Industrial Disputes Act was not maintainable. In my opinion, there is little substance in this contention. Here, it was not a mere question of underpayment over which the dispute arose. The real dispute is in treating the concerned workmen as casual workmen in place of temporary employees, under paragraph 20.7 of the settlement dated October 19, 1966. On a question like this, I hold that the reference under Sec. 10 of the Industrial Disputes Act is permissible.

8. Although I am tentatively of the opinion that the second branch of the first preliminary objection taken by Mr. Bala, has fatal consequences, I do not propose to throw out the reference only on that ground. I, therefore, propose to decide the case on merits as well.

9. Paragraph 20.7 of the settlement arrived at between the Bank Managements and their Workmen is couched in the following language:

"In supersession of paragraph 21.20 and sub-clause (c) of paragraph 23.15 of the Desai Award, 'Temporary Employee' will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than a permanent workman who is appointed in a temporary vacancy caused by the absence of a particular permanent workman."

Prior to the above settlement, the relationship of the employees and the Banks used to be controlled by an Award made by a National Tribunal presided over by Mr. Justice Kantilal T. Desai. The settlement of 1966 preserved the provisions of that Award undisturbed, in so far as it did not expressly modify the same. This will appear from paragraph 1.1 of the settlement itself, which is set out below:

"The parties are agreed that the provisions of the Award of the All-India Industrial Tribunal presided over by Shri P. Sastry as finally modified and enacted by the Industrial Disputes (Banking Companies) Decision Act, 1955, the Industrial Disputes (Banking Companies) Decision Amendment Act, 1957 and the provisions of the Award of the National Industrial Tribunal presided over by Mr. Justice K. T. Desai in Reference No. 1 of 1960 which Award *inter-alia* modified certain provisions of the Sastry Award, shall govern the service conditions therein covered except to the extent that the same have been modified in this Settlement."

If I turn to paragraph 16.9 of the Desai Award, I find that the award made no provision for casual employees. The relevant portion of paragraph 16.9 is set out below:

"I have made no provision in any part of this award in connection with them and persons who are casual employees or who are employed to do job work are excluded from the operation of this award."

10. It was contended on behalf of the employer Bank, by Mr. Bala, that the Desai Award had left casual workers at large and the Bipartite Agreement also had not touched them. The employer Bank was at liberty to recruit casual workmen and pay them on contractual basis and nothing in the Award or in the Bipartite Settlement would stand in the way of such payment. Now, I have already set out the provisions of paragraph 20.7. If casual workers, as in the instant case, would fit in the description of "temporary employees" as in paragraph 20.7 of the Bipartite Settlement, then they are no longer casual workmen but are "temporary employees" and if such temporary employees are full time workmen, they are entitled to be paid in accordance with paragraph 4.3 of the Bipartite Settlement. Thus the question for my consideration is, whether the two workmen fulfilled the description of temporary employees in paragraph 20.7 of the settlement of October 19, 1966. On behalf of the workmen, it was sought to be made out that they were both appointed in the leave vacancies of two particular permanent workmen. If that case be true, then they certainly fall within the description of "temporary employees" in paragraph 20.7 and are entitled to be paid as full time workmen in paragraph 4.3 of the Bipartite Settlement. On behalf of the Bank, however, evidence was led to show that there was a period of time when a large number of employees began either to absent themselves or to overstay their leave that occasioned the employment of the concerned workmen in the vacuum caused by the absence of or overstaying of leave by several workmen. In other words, they were not appointed in the leave vacancy of any particular permanent workmen. I am to decide which of the versions is the true version. Both versions are interesting versions. The two workmen must be interested in giving such evidence as will bring them within the definition of temporary employees under paragraph 20.7. The Bank must also be interested in leading such evidence as would place the workmen outside paragraph 20.7 of the Bipartite Settlement. Having heard the witnesses and having considered their evidence, I am inclined to believe in the evidence led on behalf of the Bank and I hold that the two workmen were appointed in a vacuum caused at a time when large number of workmen began to absent themselves or to overstay their leave. They were not appointed in the leave vacancy of any particular workmen. That being so, they cannot be included within the definition of temporary workmen as in paragraph 20.7 of the Bipartite Settlement dated October 19, 1966.

11. That being my view of the matter, I hold that the management of the National & Grindlays Bank Ltd., Calcutta was justified in treating Rajeshwar Singh and Markandeya Singh employed as subordinate staff in the Chowinghee Road Branch as casual workmen and paying them wages at the rate of Rs. 4/- per diem instead of the wages settled under the Settlement dated October 19, 1966. I hold, therefore, that, in the circumstances of the instant case, the two workmen are not entitled to any relief.

This is my award.

I make it clear that my award might have been otherwise, if it could be proved that the concerned workmen were appointed in any particular leave vacancy.

(Sd.) B. N. BANERJEE,
Presiding Officer.

Dated, May 1, 1969.

[No. 23/53/68/LRIII.]

New Delhi, the 18th May 1969

S.O. 2053.—Whereas the Central Government, being satisfied that the public interest so required, had declared by a notification made in pursuance of the provisions of the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), [being the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 4268, dated the 18th November, 1968] service in any oil-field, to be a public utility service for the purposes of the said Act for a period of six months from the 22nd November, 1968;

And whereas the Central Government is of the opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said service to be a public utility service for the purposes of the said Act for a further period of six months from the 22nd May, 1969.

[No. F. 1/34/69-LRI.]

ORDERS

New Delhi, the 20th May 1969

S.O. 2054.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Banderchua Mica Mine of Messrs Eastern Manganese and Minerals Limited, Post Office Domchanch, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, No. 2, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Banderchua Mica Mine of Messrs Eastern Manganese and Minerals Limited, Post Office Domchanch, in terminating the services of Shri Chatur Narayan Barhi, Carpenter, with effect from the 28th September, 1968, was justified? If not, to what relief is the workman entitled?

[No. 20/7/69-LRI.]

S.O. 2055.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bamangawan and Kymore Limestone Mines of Associated Cement Companies Limited, Kymore, District Jabalpur and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Jabalpur constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Bamangawan and Kymore Limestone Mines of Associated Cement Companies Limited, Kymore, District Jabalpur is justified in regulating the payment of Special Equipment Allowance, prescribed in mutual settlement dated the 23rd June, 1967 in the manner specified in their General Notice No. 191, dated the 5th August, 1967?

If not, to what relief are the workmen entitled?

[No. 36(42)/68-LRI.]

New Delhi, the 21st May 1969

S.O. 2056.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Cantonment Board, Dinapore and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal No. 3, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the Cantonment Board, Dinapore in terminating the services of Sri Suresh Chandra Singh, Overseer, with effect from the 11th September, 1968 was justified? If not, to what relief is he entitled?

[No. 9/15/68-LRIII.]

New Delhi, the 24th May, 1969

S.O. 2057.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Cantonment Board, Dinapore and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal No. 3, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the Cantonment Board Dinapore in terminating the services of Sri Chandrika Singh, Electrician, with effect from the 20th April 1968 was justified? If not, to what relief is the workman entitled?

[No. 9/10/68-LRIII.]

S.O. 2058.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Cantonment Board, Dinapore and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal No. 3, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the Cantonment Board, Dinapore, Patna in reverting Shri Ram Saroop from the post of Assistant Pump Driver to the post of Khalasi, with effect from the 22nd April 1968 was justified? If not, to what relief is the workman entitled?

[No. 9/9/68-LRIII.]

S.O. 2059.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Premier Insurance Company Limited, Calcutta, and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Messrs. Premier Insurance Company in transferring Shri M. P. Lonappan, a workman of the Company, from Calcutta to Bombay in February, 1968 was justified? If not, to what relief is he entitled?

[No 25/44/68-LR.III.]

S S SAHASRANAMAN, Under Secy.

(Dept. of Labour and Employment)

New Delhi, the 15th May, 1969

S.O. 1060—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta in the industrial dispute between the employers in relation to the Calcutta Port Commissioners, Calcutta, and their workmen, which was received by the Central Government on the 28th April, 1969. . . .

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 48 OF 1968

PARTIES:

Employers in relation to the Calcutta Port Commissioners,

AND

Their workmen

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers—Shri G. V. Karlekar, Chief Labour Officer.

On behalf of Workmen—Shri Biren Banerjee, Advocate.

STATE: West Bengal.

INDUSTRY: Port.

AWARD

By Order No. 28(47)/68-LR.III, dated July 9, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred an industrial dispute between the employers in relation to the Port Commissioners, Calcutta, and their workmen represented by the National Union of Waterfront Workers, Calcutta, to the Central Government Industrial Tribunal at Dhanbad, for adjudication, in the following circumstances and in the following language:

“Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the National Union of Waterfront Workers, Calcutta have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matters set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore, in exercise of the powers conferred by Sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

“Whether the demand of the engine drivers of certain vessels for providing them relief to enable them to come out of the engine rooms during duty hours is justified? If so, what should be the relief?”

By a later order, dated October 7, 1968, the Central Government transferred the aforesaid dispute to this tribunal for disposal, in exercise of their powers under Sub-section (1) of Section 33B of Industrial Disputes Act, 1947. The order was received by this Tribunal on October 4, 1968.

2. I need now state the background in which the dispute came to arise. The Commissioners for the Port of Calcutta are a body corporate, constituted under the Calcutta Port Act, 1890 Bengal Act, III of 1890. The units of the Port of Calcutta extend from Konnagar and the north to Budge Budge in the South. Under the Indian Port Act, 1908, the Calcutta Port Commissioners have also been appointed as Conservators of the Port of Calcutta and of the navigable river and channels leading to the port. The limits of the navigable river and channels leading to the port are in the north upto half a mile above the confluence of the Bhagirathi and the Jalangi and on the South upto the parallel of latitude 20°45' N. The distance from the docks of Calcutta upto the Sand-heads in the South is about 126 miles and the distance upto the northern limit is about 80 miles.

3. Navigable channels of the river have to be maintained by constant dredging and surveying and indicated by buoying, maintaining the lighted buoys including lighted markings and also maintaining light vessels at the estuary and various tidal semaphores along the river to facilitate navigation during day and night.

4. For the purpose of maintaining the navigable channels of the river and for other purposes as mentioned above, the Calcutta Port Commissioners have survey vessels and survey launches, dredgers and attached launchers, despatch vessels, research vessels, light vessels, pilot vessels and other vessels. The Commissioners also have tugs including tancat tugs launches and other vessels for the purpose of mooring and unmooring of the vessels and berthing of vessels in the river and docks. Some of the vessels are equipped with diesel engines and auxiliary machinery and some with steam engines and auxiliary machinery with boilers.

5. The engine room crew attached to these vessels are under an Engineer Superintendent. Engine room of a steam operated vessels is generally manned by crews known as firemen 1, firemen 11, greaser, tindal, serang and engine driver. The engine room of a diesel oil operated vessel is generally manned by crews known as greaser, tindal, serang and engine driver. Excepting vessels which are in charge of Marine engineers, engine drivers are in charge of the engine room of the vessels.

6. All engine drivers are trained persons. For securing a certificate of competency as a 2nd Class engine driver, one must appear at the examination for 2nd class engine drivers after three years service as fireman II and two years service as fireman no. I or five years' service as fireman no. I; in both the cases, service must be in a running vessel. For securing a certificate of competency as a 1st class engine driver, one with 2nd class certificate must work in the capacity of a principal greaser or a tindal or as a 2nd class engine driver in a vessel for 18 months. In all cases the service must be in a running vessel. For securing a certificate as a Licensed driver, a person with a certificate of competency as a 1st class engine driver must work in the capacity of a driver in-charge of a running vessel for five years.

7. On behalf of the workmen, the National Union of Water front Workers filed a written statement. In paragraph 14 and 15 of the said written statement, it is stated:

- “14. The Engineer (Marine) in-charge of the engine room of a vessel is assisted and relieved either by other Marine Engineers (Specially second Engineer) or Drivers. But there is no such arrangement at present to assist or relieve the Engine Driver-in-charge, so far the engine room is concerned.
- 15. The schedule duty hours of the workmen employed on the shore attached vessel viz. Tugs, Launches and Anchor vessels are in 12 hrs. shifts, 6 a.m. to 6 p.m. and to 6 p.m. to 6 a.m. and for the workmen attached to the out-going vessels the schedule duty hours are round the clock.”

These contentions were sought to be repelled by paragraph 8 of the written statement filed on behalf of the Port Commissioners in the following language:

- “(8) That with regard to paragraphs 14 and 15 of the written statement of the National Union, the Commissioners state that on vessels requiring appointment of engineers under the Inland Steam Vessels

Act or under the Merchant Shipping Act, one or more Engineers are appointed depending upon the operations that these vessels have to do, the working of the heavy and complicated machineries, carrying out of maintenance and running and general repairs of these machineries and boilers and the number of shifts or watches that the Engineers have to perform. The appointment of one or more Engineers is based upon all the above factors taken together and not on the principle of giving relief only as alleged by the National Union. Regarding further intention of the National Union that there is no such arrangement at present to assist or relieve the engine driver in charge so for the engine room is concerned, the Commissioners state that Drivers in charge normally have to carry out work in one shift a day with fixed or variable intervals for rest. The vessels also do not work continuously and there are intermissions during which the drivers in charge are not required to keep the main engine and some others engines running. The Commissioners have on some vessels like Tugs and Launches and Anchor vessels crew in 2 shifts of 12 hours each with variable recess of 2 hours, who are paid 62½ per cent gross wages as overtime. Drivers in charge of launches working on the river for survey work or of those attached to the Dredgers are generally required to work in a single shift during day only, and are entitled to 67½ per cent of gross wages as overtime in addition to free provision. The work is also not continuous and there are intermissions in work during which they are not required to keep all the engines running."

In paragraph 16 of the written statement filed on behalf of the workmen by the National Union of Waterfront workers, it was stated:

"(16) The concerned workmen of shore-attached vessels are provided with weekly rest day. But the concerned workmen attached to the outgoing vessels are not provided with weekly rest day. Of course they are provided with 26 days special casual leave in a year".

This contention, however, was sought to be repelled in the following manner, by paragraph 9 of the written statement filed on behalf of the Port Commissioners:

"(9) That with regard to paragraph 16 of the written statement of the National Union the Commissioners state that the contentions of the National Union are not wholly correct. The concerned workmen attached to the outgoing vessels are given weekly rest days when the vessels are in town or are laid up for annual survey and repairs as far as possible. The Commissioners in agreement with their recognised unions have introduced a system of giving these workmen 26 days special casual leave to compensate them for loss, if any, in their weekly rest days."

The grievances of the engine drivers were sought to be particularised in paragraphs 17 to 21 of the written statement, filed on behalf of the workmen by the National Union of Waterfront workers:

"(17) The engine have to be kept running and ready always for the next job. So the Engine Drivers are required to keep themselves engaged even after each operation, as the safety and maintenance of the engines depend on them. Even the tugs and launches must also keep their engines working between two jobs and this needs the Driver-in-charge (Engine room) to be kept on duty at that time.

(18) The responsibilities lie on the Engine Driver who is in-charge of engine room of a vessel. He is also responsible to explain in case of break-down irrespective of main and auxiliary engines. In case of his absence from the engine room being reported to the Mercantile Marine Department, the certificate of competency issued by them may be cancelled by the Principal Officer, Marine House, Mercantile Marine Dept., Ministry of Transport & Shipping, Shipping Wing, Government of India. Keeping attendance and reporting absenteeism of the crew of engine room are also the part of the duties of Engine Driver-in-charge.

(19) The annual Survey of the vessels is made on the strength of the certificates issued by the Mercantile Marine Department to the Engine Drivers who are in charge of different vessels.

(20) The vessels under the charge of Chief Engineer are also provided with second, third, fourth and even fifth engineer. But vessels under the charge of the Engine Drivers have got no other Driver

to assist, to relieve or to take charge of the Engine Room. Even in case of sudden sickness or other difficulties there is none to relieve the Engine Driver.

(21) The vessel (launches) attached to the River Survey Section, Dredger and Despatch service section, River Research Section etc. where the Engine Drivers are employed round the clock have got no other Engine Drivers to relieve them or to take charge of the engine room as a result of which the workmen concerned covered under the present terms of reference cannot obtain at any time from the engine room. No Rating can take the charge of the Engine room without obtaining certificate of competency from the Mercantile Marine Dept. The Engine Driver cannot leave engine room without making over the charge to other certificate holder. In case of an engine driver being found leaving the engine room, he is liable to disciplinary action."

These allegations were sought to be replied to in paragraph 10 to 14 of the written statement filed on behalf of the Port Commissioners, which are set out below:

"(10) That with regard to paragraph 17 of the written statement of the National Union, the Commissioners state that while in between the two jobs the engine drivers are required to keep the engine ready they are not required to keep all the engine running and while the engines are not running the engine drivers are also not required to be in the engine room continuously.

(11) That with regard to paragraph 18 of the written statement of the National Union, the Commissioners state that while the Engine Drivers in charge of the engine room of Vessels and also is required to explain the case of break-down in respect of main and auxiliary engine, the contention of the National Union that "in case of his absence from the engine room being reported to the Mercantile Marine Department, the certificate of competency issued by them may be cancelled by the Principal Officer is not correct, but the driver during his working period while the vessel is in operation is required to be in the engine room. He is also required to check up the machine and boiler periodically. Other duties stated by the National Union are normal duties which they are required to perform.

(12) That with regard to paragraph 19 of the written statement of the National Union, the Commissioners state that the contentions of the National Union are not wholly correct. The final survey of vessels is done annually and at the time of the final survey, the surveying authority takes note of the details of the certificate of the Drivers concerned, the purpose being to ensure that the engine room of a particular vessel is in charge of engine driver having the requisite certificate of competency.

(13) That with regard to paragraph 20 of the written statement of the National Union, the Commissioners crave reference to their contentions at paragraph 8 above and state that in case of sudden sickness or other difficulties of an engine driver, substitutes are provided and if the next man is qualified he is allowed to take charge till the substitute is available. This applies to both the Engineers in charge as well as Drivers in charge.

(14) That with regard to paragraph 21 of the written statement of the National Union, the Commissioners state that the contentions of the National Union are not correct and are, therefore, denied. In case of Engine Drivers in charge of launches in River Survey Section, Dredger and Despatch Service Section, the Drivers are allowed to go out of the engine room when the main engines are not working. On such launches generally main engines are run intermittently and the total period of such running of the main engine on an average does not exceed 10 hours a day.

8. In the background of these pleadings, I am to decide the claim whether engine drivers of the several kinds of vessels used in the Port are entitled to a relieving hand so that they may come out of the engine rooms within duty hours and relax.

9. Mr. Biren Banerjee, learned Advocate for National Union of Waterfront Workers, contended that the inside of every engine room was either steamy or

shoaly or greasy or oily place of stifling atmosphere. Human muscles cannot long work inside an engine room. During the prescribed shift duty hours, which admittedly extend between 10 to 12 hours, engine drivers must have some relief hand to substitute them inside the engine room so that they may come out, ease, refresh and relax themselves and then go back to work being relieved of their human tiredness.

10. In order to test the arguments of Mr. Banerjee, it is necessary for me to see what types of work are done by the different vessels named in the written statements and for how long on each day. The oral evidence on the above two points, led before this tribunal, is much too cryptic and far from being full and complete. This is so, because parties relied upon an award made by this Tribunal (then presided over by my learned predecessor Mr. S. K. Sen) between the same parties, which are published in the Gazette of India of September 30, 1967 (Ext. 2 by consent). The said award, although on a different industrial dispute, contains a detailed examination of the nature of work done by several of the Port Commissioners' vessels involved in the present dispute. I propose to set out the relevant portions of the said award hereunder. In paragraph 6 of the award it is stated:

"The Director, Marine, . . . is in over-all charge of the Marine Department. This department is divided into a number of sections, Pilot vessels are under Port Pilotage establishment, of which the chief officer is the Harbour Master, River, previously known as the Port Pilotage Officer. Dredgers and Despatch vessels are under the Dredger and Despatch Service section; Light vessels and Saugar lighthouse are also controlled by this section. River Survey vessels and Research vessel and shore stations, like Hooghly Point station and various Semaphores and Sounding Party stations are under the River Survey section of which officer-in-charge is known as the River Surveyor. The crew of the above mentioned vessels and shore stations, including attached launches, have to be away from Calcutta Port for the greater part of each month and the crew of some vessels for months together. . . . These sections, apart from pilotage, are responsible for the main tenance of the approaches of the Port in a safe and navigable condition; they must not only keep the channel navigable but keep it readily recognisable by maintaining lighted buoys and other navigable marks. At the Port itself, ships must be moored and unmoored in the river, led into the docks and berthed, and taken out again; that work is in charge of the Mooring Master and the Dock Master, who are under the overall control of the Harbour Master, Port. Heaveup boats, Hawser boats and anchor vessels are under the Mooring Master's section; that section also keeps some batches of mooring crews to help foreign vessels to moor or unmoor. In the Dock Master's section, there are tugs and launches, jolly boats and motor boats. The Engineering Superintendent's section controls the crew and officers on the engine side both of vessels which go down the river and the vessels working in the Port."

It is also necessary to set out briefly from award, the nature of work done by the various vessels mentioned in the written statements:

(a) *Pilot vessels.*—Each pilot vessels normally remains for 16 days at Sandheads at one stretch and 12 days in Calcutta Port, the journey occupying one day each way. When at Sandheads, the motor boats attached to the pilot vessels are used for carrying the pilots from the pilot vessel to an incoming ship or from an outgoing ship to the pilot vessel. On the average nine boating trips have to be made per day for the purpose. This is the primary work for which Pilot vessels are maintained. When at Sandheads the normal working hours of the crew are from 6 a.m. to 4 p.m. with recess for break-fast from 9 a.m. to 10 a.m. and for lunch from 1 p.m. to 2 p.m.: boating may have to be done outside these normal hours or at night, but if there is excessive boating done in a particular night, the crew are given the previous day off, if the boating was anticipated, or the subsequent day off. If it was not anticipated. Four members of the crew on the deck side go in a motor boat apart from the Engine driver. The Pilot vessels usually arrives at Calcutta Port on a Thursday and the crews get 2 Sundays in Calcutta every month. When at Port the programme is, day duty from 7 a.m. to 4 p.m. with 2 breaks of one hour each for meals on week days, 7 a.m. to 1

P.M. on Saturdays and 7 A.M. to 9 A.M. on Sundays. When at Sandheads the two motor drivers are on stand by duty for 12 hours at a time one during the day and one during the night. Three of the gressers are engaged in oiling and greasing the engine by rotation on the system of 4 hours on and 8 hours off. The remaining crew of the engine side do day duty i.e. maintenance duty from 7 to 4 P.M. on week days, 7 A.M. to 1 P.M. on Saturdays and 7 30 A.M. to 9 30 A.M. on Sundays and on holidays the Sunday routine is followed. During day duty there is one hour's recess for breakfast and one hour's recess for lunch. When the Pilot vessel is at Calcutta the two motor drivers and one greaser by rotation do 8 hours watch and get 10 hours off on shore leave.

(b) *Dredgers.*—The channel of the Hoogly river has to be subjected to constant dredging to maintain a sufficient draft for sea going vessels. Five of the dredgers have launches attached to them. A survey party goes out in the launch and makes a survey and gives a chart to the Commander of the dredger and the Commander decides from the chart where the dredging is to be done. When the dredger is down the river for dredging, one Serang or tindal, and two firemen are on duty in the boiler room, doing duty for 4 hours and getting 8 hours off. For this purpose 1 Serang and two tindals and 6 Firemen are required and they are divided into 3 batches, each working for 8 hours. In the Engine room, 2 greasers work at a time, 4 hours on and 8 hours off; in the Pump room one driver and one greaser keep watch at a time, their shift being 3 hours on and 3 hours off. But pump room works only during the dredging time, the maximum dredging being 10 to 11 hours in a day of 24 hours. The 3 watchmen have also to work during actual dredging time and they work on the system of 2 hours on and 2 hours off. The cassab and electricians and technicians with the remaining 8 firemen do day duty from 6 a.m. to 4 p.m. with one off for breakfast and one hour off for lunch. The day duty consists of maintenance and cleaning and minor repairs and filling up oil tanks and so on. On Saturdays the day duty is done between 6 a.m. and 12 noon with an hour's break fast and on Sundays and holidays the duty is done between 6 a.m. and 9 a.m. When the dredger is at Calcutta 1 driver, 2 tindals and 3 Firemen are required for boiler room watch. They are divided in 3 batches of 2 men each and each batch works for 8 hours at a stretch and then gets 16 hours off during which time the men may have shore leave. In the Engine room also there are 3 greasers, each one working for 8 hours and getting 16 hours off. The remaining crew members do maintenance work between 7.30 a.m. and 4 p.m. with 2 hours off for breakfast and lunch and then 50 per cent of the crew get shore leave and the others remain on the ship, arranging watch duty by 2 men at a time for 2 hours. On Saturdays the day duty is done upto 12 noon and on Sundays upto 9 a.m. after which 50 per cent get shore leave. When the dredger is at Calcutta port, the programme of work for the crew is the same as that for other vessels which go down the river and 50 per cent get shore leave every day after the day's work is done at 4 p.m. or on Saturday at 1 p.m. and on Sunday at 9 a.m. When the dredger is down the river, dredging is done for about 10 hours per day except for the dredger Churni which is equipped for continuous work. During dredging the services of following crew members are required, viz., the Serang and the tindal to relieve him, 3 seacunns each working for 2 hours at the wheel and taking 4 hours off, a tide watcher and leadsman. When the ship is going on to a bar, the services of 2 leadsmen are required but when the ship is placed in position for dredging one leadsman is required. Two or three laskers are required in the operation of dredging. The other members of the crew do day work from 6 a.m. to 4 p.m. i.e. maintenance and cleaning with 2 breaks for meals. On Saturdays the work is done upto 1 p.m. and on Sundays upto 9 a.m. A dredger is down the river for 12 days at a time and stays for 3 or 4 days at Calcutta. Thus the stay at Calcutta port is 6 to 8 days per month when the dredger is in commission. The dredger on the average is laid up for 65 to 70 days in the year for annual survey or overhauling and boiler cleaning. During that time the crew remain attached to the dredger and 50 per cent gets shore leave every day after the day's work is done.

(c) *Despatch vessels*.—The work performed by the despatch vessels, includes maintenance of lighted shore marks and lighted buoys overhauling of buoys in the estuary area and maintaining some high marks which the river survey vessels do not maintain. The despatch vessels also supply rations to the three light vessels posted in the estuary areas and to Sauger light house. The despatch vessels have powerful engines and they are called upon to give assistance to sea going vessels when they are aground or otherwise in difficulty. The duties also include looking for lost anchors and salvaging them when located. Normally a despatch vessel stays at Calcutta Port for 8 or 10 days in the month and does duty down the river for about 20 days in the month. On the average there are 3 days down the river in a month, for 6 or 7 days on each occasion, with stay for 6 Firemen and 2 Bhandaris. The programme of work down the river Occasionally, however, for emergency duty, a despatch vessel may have to go down the river within a day or two of its arrival at Calcutta, but that emergency duty lasts only for a day or two. On the engine room side the crew consists of 1 Serang, 2 Tindal, 1 Cassab, 6 Greasers, 6 Firemen and 2 Bhandaris. The programme of work down the river is more or less similar to that for Pilot vessels. The programme for the crew when the vessel is at Calcutta Port is also similar to that for the Pilot vessels. There is a liability of the crew on shore leave to be recalled if the despatch vessel is required to go out on emergency duty.

(d) *Light vessels*.—A light vessel remains at one station for about a year and then it comes back to Calcutta for survey, i.e. annual overhaul, and if there is no storm the normal hours of duty are 6 a.m. to 4 p.m. with recess of one hour each for two meals and after 4 p.m. the crew have to do watch duty by rotation. When there is monsoonic or stormy weather the conditions of work in the light vessels and the light house become difficult and sometimes the crew of the light vessels cannot cook their meals on account of stormy weather. It is in recognition of the relatively hard conditions of service of the crew serving in the light vessels that they are usually granted a month's leave after 6 months' service.

(e) *River Survey vessels*.—So far as the river survey vessels are concerned, their main work is constant surveying of the navigable channel of the river Hoogly. Owing to the shifting of the shoals, the channel changes from time to time and the new channel has to be marked and where the depth at a bar or any other part of the channel becomes too small the place has to be dredged and deepened. The marking of the channel as well as the dredging is based on the result of the survey work. A river survey vessel stays down the river for 16 or 17 days in a month in two trips of 8 days each and between the trips the survey vessel stays at a mooring at Calcutta for 6 or 7 days at a time. Thus, the total number of days at mooring comes to 12 or 13 days in a month. When at mooring at Calcutta the programme of work which consists of maintenance and obtaining the necessary stores for the next voyage, is similar to that already described for the crew of the Pilot vessel. Apart from the normal stay of 12 or 13 days in a month in Calcutta, the survey vessel remains at Calcutta for two months and a half or 3 months every year, i.e., 2 months for annual survey or overhaul and 15 days for boiler cleaning. At that time 50 per cent of the crew gets shore leave. The number of crew in the several river survey vessels varies slightly from one vessel to another. On the RSV Haldia on the deck side there are 1 Serang, 3 Seacunns, 3 Leadsman, 1 Cassab, 1 Tide watcher, 8 laskers, 1 Bhandari and 1 Topaz apart from the Saloon staff. On the Engine room side there are 2 drivers, one tindal, 4 greasers, 3 firemen, 1 bhandari and 1 trainee firman. When the vessel is moving, each seacunny is on duty for 2 hours and then 2 hours rest and then on standby duty for 2 hours. When survey is being done the echo sounder is used by an officer but one leadsmen and 1 khalasi along with one seacunny and one tide watcher standby for duty. There is a motor boat carried by each survey vessel and survey of shallow water is done by the motor boat. Two Officers one Seacunny, two Leadsman and two Laskars and one Engine driver from the party going out a motor boat for survey work. The members of the crew not engaged

on running the engine or on operational work do day duty when the vessel is down the river from 6 a.m. to 4 p.m. with 2 hours off for break fast and lunch. On Saturday and Sunday there is limited day duty as in other vessels when down the river. Some members of the crew who are engaged on some urgent work at that time may not be able to take off for break-fast between the usual hours of 9 to 10 a.m. or for lunch between 1 to 2 p.m. but they are relieved either before or after the usual hours and are granted the prescribed recess for their meals and personal work. The crew included in the motor bat does not do the day work of maintenance.

(f) *Research vessels*.—For obtaining research data, the work done is current observation, wave recording, bad boring and so on. The programme of work for the crew when at Calcutta Port is similar to that for other vessels which go down the river. When the vessel is down the river, apart from the Seacunny, greasers, firemen, etc., who are engaged in running the ship, some members of the crew are required to lower and raise the structure for bad boring, to watch the apparatus for wave recording which is set up by officers and to raise and lower the apparatus required for current observation, the readings being taken by an officer. In view of the nature of work there are no fixed hours provided for work down the river."

I need notice here that it was observed by one witness, in Reference Nos. 136, 137 and 140 of 1966 (Employers in relation to the Commissioners of Calcutta Port vs. their workmen):

"PW-17. Birendra N. Malakar serving in the Research Vessel admitted in cross examination that if fixed hours of recess are provided it would not be possible to do the work intended to be done by the Research Vessel. But nobody has asked for transfer from the Research vessel."

(g) *Anchor vessels*.—These vessels belong to the Mooring Master's Section. There is on the deck side, one Serang, one tindal, fourteen laskars and one or two drivers and on the engine side one driver, one tindal and two firemen. The crew work for twenty-four hours at a stretch and then get twenty-four hours off, when they go home. Then they are on duty for forty-eight hours continuously and then get forty-eight hours off. In addition, they get a weekly day off, which may be joined with the twenty-four hours off after one stretch of 24 hours duty or with 48 hours off after 48 hours of duty. According to the Port Commissioners, the work done by Anchor vessels is intermittent and the duty hours extend over 12 hours per day. The main duty of the anchor vessel crew is to fix buoys and to maintain them in Port area. The crew of the anchor vessel has also to see the maintenance of jetty springs to which ships are anchored and they are occasionally required to fix jetties in position with chain. The anchor vessels also have to carry the heavy anchor from Taktaghat for mooring vessels when a bore tide is expected. The salvage work in the Port area is included within the normal duty of the anchor vessel and that is why one or two divers have been provided in each anchor vessel. The drivers find out the position of the sunk vessel and then the crew of the anchor vessel have to pull up the sunk vessel with the help of tackles and wire ropes.

(h) *Launches and Tranac Tugs*.—The crews work in 12 hours shift, 6 a.m. to 6 p.m. or 6 p.m. to 6 a.m. The duties include carrying the Harbour Master from Rajabagan to meet an incoming ship, where he relieves the pilot and brings in the ship for mooring and carrying the pilot from Shalimar to Garden Reach where the pilot takes over from the Harbour Master for taking an outgoing ship down the river. The launches or tranac tugs are used also to two heaveup boats and hawser boats in position for their mooring or unmooring jobs. When a bore tide is apprehended, the Mooring Master patrols a section of the river in one launch and the Assistant Mooring Master in another launch one taking the area from Taktaghat to Howrah bridge and another from Taktaghat down to Garden Reach. A launch also carries the mooring crew along with the Assistant Harbour master to meet the incoming foreign ship at Garden Reach. This is apart from the duties which launches perform when accompanying dredgers and other vessels.

The Port Commissioners have about 11 tugs including one river tug; 4 tugs remain in the Kidderpore dock and 2 in the King George's dock, 2 are usually out of commission. The tugs, apart from other duties, guide sea going ships through the channel into the dock; crews of tugs work for 12 hours shift, 7 A.M. to 7 P.M. and 7 P.M. to 7 A.M.

It is noteworthy that it was definitely held in the previous award, Ex. 2:

'The crew are absent from their home but this does not imply that they are on duty all the time. (Underlined by me for emphasis).

The matter was also examined from another point of view and it was observed:

"Some idea of the hours of their duty has already been given in the brief description of the work done in different types of vessels. The scales of pay for different types of crew were fixed on an assessment of the nature of their work and dearness allowance at the Central Government scales is being paid since 1943; and the pay scales were revised in consonance with the recommendations of the First Pay Commission and thereafter of the Second Pay Commission.

Difficulties began to arise when the Minimum Wages Act of 1948 was passed and became applicable to the employees of the Port Commissioners with all its rules as to normal hours of work and weekly holiday and overtime. ***The minimum wages were fixed at the stage of the pay-scale which the Port Commissioners were paying at the time of the various notifications. Under Section 13 of the Minimum Wages Act the appropriate Government may fix hours of work, etc., in respect of any scheduled employment. Section 13 Sub-section (i) is as follows:—

- "(1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may—
 - (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
 - (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
 - (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

The Central Government published the Minimum Wages Central Rules 1950; in these Rules, the hours of work constituting a normal day were laid down and provision was made for a weekly day of rest and overtime payment for work on such day. Rule 23 relates to the weekly day of rest and provides that an employee under scheduled employment in respect of which minimum rates of wages have been fixed under the Act shall be allowed a day of rest every week which shall ordinarily be Sunday, but the employer may fix any other day of week as rest day for any employee or class of employees in that scheduled employment. Payment is to be made for the weekly day of rest as for a normal working day. Rule 24 relates to the number of hours of work constituting a normal working day. Sub-rules (1) and (2) of Rules 24 are as follows:

- (1) The number of hours which shall constitute a normal working day shall be:
 - (a) in the case of an adult, 9 hours.
 - (b) in the case of child, $4\frac{1}{2}$ hours.
- (2) The working day of an adult worker shall be so arranged that inclusive of the intervals for rest, if any, it shall not spread over more than twelve hours on any day.

Rule 25 relates to extra wages for overtime and provides that when a worker works in an employment for more than 9 hours on any day or for more than 48 hours in any week, he shall in respect of overtime work be entitled to wages at double the ordinary rate of wage in any scheduled employment other than agriculture."

11. The above description taken from award, Ext. 2, gives a good deal of idea about the work done by different types of Port Commissioners' vessels and the duration of their work. But it does not impart much information about the duty hours of the engine drivers in particular and also about the nature of their work. I have, therefore, to turn to the oral evidence in this case, although, as I have already observed, that evidence is far from being full and complete. Witness No. 1 for the workmen was Phani Bhajan Nag, himself an engine driver. In his examination in-chief he said:

"An engine driver has to look after the operation work of the engine room as also the maintenance of the engines. I have to operate engines. There are two engines in the engine room. I have to operate both the engines, at the same time. The manoeuvring work of the engine I have to do myself. The main driving work of the engine has also to be performed by myself. I have no helper. I have to attend 12 hours at a stretch in my duty. There is nobody to help in any work of the engine room."

He continued speaking in the same manner in his cross-examination:

"We work for 12 hours. During the duty period there is no division of work. It is not correct that during the 12 hours, 8 hours are treated as duty hours, 2 hours as overtime and 2 hours as recess period. We do not get 4 hours as the period of overtime work."

The tall statement made by the witness, however, was considerably toned down by him later on. In answer to a question put by the Tribunal, he stated:

"Our period of work is for 10 hours and we get 2 hours of overtime."

In course of his further cross-examination, however, he admitted that his experience was limited to tugs and dredgers. He said:

"Bhagirathi is a dredging ship but it also does dredging survey work. I worked on Bhagirathi as a driver. I never worked on the launch accompanying Bhagirathi. On Board Bhagirathi I had to do 4 hours duty at a stretch then enjoy 8 hours rest. On Board Bhagirathi I had to remain inside the engine room for four hours at a stretch."

Questioned by the tribunal on the nature of work on tugs, he spoke about the intermittent nature of duty:

"While I work on tugs I have to be inside the engine room for 2 hours or 2 hours and a half at a stretch. On board 'Jalangi' I used to work 4 hours at a stretch and then enjoy 8 hours rest. On board Champa, Chameli and Malati, I may have to be inside the engine room for 3 to 4 hours and the rest of the time, I have to be on my guard although outside the engine room. Ordinarily reliefs are available when 12 hours duty at a stretch are allotted or when one is to be in charge for 24 hours. But there are occasions when relief does not arrive, when long stretches of duty have to be performed. I have not worked in any vessel where engine drivers are employed round the clock and I am not in a position to vouchsafe the truth of the statement contained in paragraph 21 of the written statement filed by National Union of Waterfront workers."

In course of cross-examination he further said:

"I have never worked in any vessel where an engine driver is required to put in 24 hours duty... I have not worked on launches... A tug normally works at least for two to three hours at a time. A launch also works for two to three hours at a time. Thereafter, they come back to the station and wait for another assignment of work. When back to the station all types of vessels shut down their main engine but the auxiliary engines remain on. Some of the auxiliary machines are automatic but not all of them. These auxiliary machines are attended to by the engine driver. When back to the station, the engine driver of a vessel has to remain on board. He has not the permission to leave the vessel."

Further examined by the tribunal, he answered:

"In each of the vessels there are bunks where the engine drivers may relax. The position is the same with other men on duty on board."

He, however, stated in course of the last part of his cross-examination:

"When back to the station and when the main engine is shut off, an engine driver may come out of the engine room but he has to stay on at the door of the engine room and watch....The work of an engine driver is work of intermittent type that is to say that the process of work is not for the entire duty period of 12 hours."

The second witness examined on behalf of workmen was Bhupendra Narayan Ghose Mazumdar, an engine driver. In his examination in-chief he said:

"An engine driver has to operate the engine, to repair the engines and also keep proper maintenance. The other members of the staff on board the vessel work under the supervision of the engine driver. Engine drivers have to stay inside the engine room for 12 hours of their duty. When required to go out to attend either call of nature or to feed himself, engine drivers may go out of the engine room. At that time he keeps somebody else in charge of the engines. At the time when the engine driver goes out of the engine room, the engine driver remains responsible for any defect cropping up in the engines. To operate the engine is entirely the responsibility of the engine driver."

In course of his cross-examination, however, he notified himself and stated:

"I get one day off as my weekly rest day. Tugs and launches generally work when tides are on but they may be required to work even at times when there is no tide. A tug or a launch comes to station when there is no tide. A tug or a launch comes to station after duty, the engine driver is not required to operate the main engine any more but he has many other works to do. During that time the defects discovered in the machine, equipments have to be repaired. Such defects are mostly discovered after each particular run of duty. We have to carry out minor and major repairs both....Out of 12 hours duty, we get overtime wages for two hours. We do not get 2 hours as recess..Attached launches work on the average 10 to 12 hours a day."

The third witness examined on behalf of the workmen was Sisir Kumar Kanjilal, a Tindal. He worked as an engine driver only in temporary vacancies on board Port Commissioners' vessels. He never worked as an engine driver on any tug or any launch. He, however, made a very categoric statement. "Tindals never do the work of an engine driver." Regard being had to his limited experience, I do not make much of this witness. The fourth witness for the workmen was Bisweswar Kar, a 2nd class engine driver. He said in his examination in chief:

"I have to work under the Port Commissioners at a stretch of 12 hours.. During the duty hours if I have to go out to ease myself or to feed myself, I have to go out at my own responsibility. It often happens that I do not get any time to go out. At the time when I go out if there is any defect in engine the responsibility is mine. No qualified assistant is given to us for relief."

In cross-examination, however, he considerably broke down and stated:

"I have never worked as an engine driver on any tug or launch. I cannot therefore say whether engine drivers on tugs or launches get any relief or not. I cannot say whether out of these 12 hours, 8 hours are duty hours, 2 hours are also duty hours but are paid at overtime scale and 2 hours are fixed for recess. I work for all the 12 hours."

This is the entirety of the oral evidence on which the workmen tried to establish their claim for relief to engine drivers of Port Commissioners' vessels. On behalf of the Port Commissioners great efforts were made to establish the hours of work of engine drivers by proving 'log books' kept on board Port Commissioners' vessels. A log book, as is well known, is a book containing official records of a ship's progress and proceedings on board. That such log books should be regularly maintained on different vessels of the Port Commissioners, I have no doubt. In practice, however, this is not done. While the first witness on behalf of the workmen was being examined, who was himself the engine driver of tug "Malati", an attempt was made to produce the log book of tug "Malati" before this tribunal. Phani Bhusan Nag, the engine driver, however, denied that he

maintained any such log book. Thereupon, under my orders the locker of the tug was opened, as prayed for by Mr. Karlekar for the Port Commissioners and papers were taken out but the log book was not found. Mr. Karlekar, however, caused production of three other log books, namely log book of MV "Topsee" (Ext. 3), log book of tug "Hena" (Ext. 4) and log book of tug "Champa" (Ext. 5). Those exhibits contain entries about the hours during which the engine of the vessels worked but all the exhibits do not appear to have been regularly kept or similarly kept according to a pattern. Witness No. 1 for the Port Commissioners, Surya Kumar Choudhury, who is an engine driver himself, stated in his examination in-chief, "engine drivers have to maintain a log book while the engines are on the run. In other words, engine drivers have to maintain particulars of the engine during duty hours." He proved Ext. 3 and stated, "such log books are being maintained by engine drivers in all launches, tugs and other vessels. In cross-examination, however, he stated:

"There are specified instructions about the manner in which the log books have to be maintained. The instructions require us to record consumptions of fuel and oil per diem and also to send a report of requirements to the Port Commissioners. The instructions are in writing. Log book, however, has not been maintained by me according to the instructions but according to my own convenience. Log books are not regularly checked. Ext. 3, however, has never been checked."

Witness No. 2 for the Port Commissioners, Ranendra Mohan Saha, proved Ext. 4 and gave a separate reason about the maintenance of log book on board tug "Hena". According to him "Hena" was a new vessel with a new type of machine and there was an engineer posted to see if the vessel was properly running during the guarantee period. In cross-examination he stated:

"An engineer was posted in order to see whether the vessel was working properly and was consuming proper quantities of oil. The maintenance of log book was, therefore, all the more necessary. After the guarantee period is over, it is not necessary to maintain a log book in such details. The log books are not regularly checked. This book does not show that it was at all checked. We received a circular of instruction for maintenance of a log book showing running hours. That instruction also directed us to maintain a record of oil consumption. The instruction did not however contain further directions about maintenance of particular columns in the log book."

The instructions spoken of either by witness Surya Kumar Choudhury or by witness Ranendra Mohan Saha were not produced before me. The third witness examined by the Port Commissioners, Arun Chandra Das, however, proved disastrous. Why this witness was at all examined by the Port Commissioners passes my comprehension. He stated in his examination in chief:

"We do not really maintain a log book. During our leisure hours, while operating the engine we sometimes make certain entries in a book. When we do not get any leisure, we do not make any entry at all. We do not maintain in the log book the total hours during which the engine has worked. We have no such time."

Regard being had to the nature of the evidence, I am not in a position to place very great reliance on Exts. 3, 4 and 5 and to base my conclusion about the working hours of engine drivers on the basis of such materials. I am now left with the evidence of Amar Singh, Deputy Engineer Superintendent. In his examination-in-chief he stated:

"The crews working in the engine room of tugs are under the Engineer Superintendent to whom I am the Deputy. In tugs and launches there are two shifts. In tugs workmen work from 7 A.M. to 7 P.M. and 7 P.M. to 7 A.M. On Mooring Master launches workmen also work during the same hours. The launches under the River surveyor, one set of crew keep the vessel working during 24 hours. Although on duty for 24 hours, the duty period is divided roughly into 3 periods captive time, active time and working time. By captive time I mean, that the vessel is away from the base, crew remaining on board as if on duty but not doing active duty. By active time I mean the period when the workmen are called to duty but not actually allotted any duty. By working time I mean the period the workmen are actually on the job allotted to them. On

river survey vessels the working hours are on the average 8 to 9 hours but on other vessels it is 6 to 7 hours. This is according to my experience. When the main engine is active in working, the engine drivers have to be on duty, but when the main engine is shut off they come out of the engine room, and may have some relaxation but at the peril of being called back to duty at any moment. Survey vessels work during day time only and although there is only one driver even for a vessel remaining out of the base for several days, the occasion does not arise when the driver has to work for all the 24 hours. In survey vessels, by which I mean the big vessels, there are engineers in charge and engine drivers are under them. To such survey vessels there are at times launches attached. The launches are under charge of the engine drivers. On survey vessels the duty of an engine driver is intermittent. His duties may be shared by the engineer or the tindal.

To tribunal:

It is the convention amongst the engineers and the tindals to share the duties of an engine driver when the launches may be on duty for a pretty long time.

Exam. in-chief:

(Shown paragraph 21 of the written statement filed on behalf of the workmen). If on voyage any accident happens to the engine driver, the greaser takes the launch to the destination. The greaser also informs the office and a relieving man is sent. The launch does not leave till a competent relieving man arrives. There is however no second engine driver to relieve on board."

He was not very much cross-examined. All that was got out of him in cross-examination was:

On diesel tugs there are two engines, so also on steam tugs. In Dock master launches there is one engine each. In Mooring master's launches some are operated with two engines and some with one engine only. The launches accompanying dredgers have one engine. The main engines have also their auxiliaries. An engine driver, broadly speaking, is responsible for running and maintenance of all the machinery in the engine room. The location of the machinery is dependant upon the layout of the vessel. In Mooring master's launches, in river survey launches, the dredger and despatch launches and in tannac tugs the machinery are consistently located in one room. Number of persons working on board is determined according to the need. The engine driver is in charge of the engines but the Inland master is in charge of the vessel. An Inland master stays on the vessel. If there be any break down in the engine or in machinery the driver is responsible. During his duty hours an engine driver can not leave the vessel."

On an analysis of the oral evidence, I do not get the idea that engine drivers are all sweated like galley slaves on board Port Commissioners vessels. It is true that during the captive period for engine drivers, that is to say the period when they are on board the vessel, they cannot leave the vessel although their working period does not coincide with their captive period. The period of their active duty or of working hours is not as tiresome as was sought to be made out. In shore attached vessels, that is to say, in tugs including tannac tugs, launches and other vessels, used, *inter alia*, for the purpose of mooring and unmooring of vessels and berthing of vessels in the river and docks, engine drivers work for 2 to 4 hours at a stretch and then relax for 8 hours; thereafter, they may again go to work. Same is the type of work on survey vessels. In case of long hours of duty, relief is generally available. This is the evidence of Phani Bhushan Nag, witness No. 1 for the workmen. Amar Singh, Deputy Engineer Superintendent, witness No. 4 for the Port Commissioners, said:

"On river survey vessels working hours are on the average 8 to 9 hours and on other vessels it is 6 to 7 hours. This is according to my experience."

Nevertheless, this witness said that the convention was that engineers or tindals, wherever available, shared the duties of engine drivers, when on duty for pretty long time.

12. In my opinion witnesses for the workmen, who spoke of 12 hours of duty or even 24 hours of duty without rest and without respite even for call of nature, made a confusion between active period of duty and the captive period and were prone to exaggerate. They should not be relied on. The work of engine drivers are of intermittent nature, which may extend to 6 to 7 to 8 to 9 hours per day as told by Amar Singh, the Deputy Engineer Superintendent, with breaks or reliefs in between. It is also an admitted fact that engine drivers get overtime pay for extra duty hours. This fact is also mentioned in Ext. 6, the minutes of the meeting of the Port Commissioners dated January 11, 1954. On the evidence before me, I am of the opinion, the engine drivers do not ordinarily do work which is much too tiresome for human body, although the call to work may come at any time during duty hours. Those vessels, which go out on long voyages, and on which there is only a single engine driver, may require an extra engine driver if the programme of such vessel is to work for longer hours than usual. I, therefore, think that the dispute referred to me should be answered in the following manner:

- (i) The demand of all engine drivers of Port Commissioners' vessels for providing them relief to enable them to come out of the engine room during duty hours is not justified. Their work is of intermittent nature although they may have to remain captive on board for long period. The nature of their duty is not physically much too tiresome.
- (ii) Engine drivers of vessels which make long voyages or engine drivers of accompanying launches, if not required to do duty for longer hours than usual, do not require relief to enable them to come out of engine room during duty hours, because of the intermittent nature of their duty, which again is not physically much too tiresome.
- (iii) If, however, a single engine driver of a long range vessel or of an accompanying launch or of other vessels be called upon to do longer hours of work than usual, then only a relief need be provided to him so as to enable him to relax and rest.

In proposing the aforesaid answers, I am conscious of the fact that Engine drivers have to remain captive on board either for 12 hours or for 24 hours or even for longer durations. I am also conscious of the fact that engine drivers may be called to duty, namely, either to work the engines or to repair them or to attend to their maintenance at any time. But living conditions on board is not said to be bad and I am not prepared to hold that engine drivers must require relief because they have to stay on board for long. Also, the fact that an engine driver is liable to be called to duty at any hour of the day does not necessarily call for relief, because life on a vessel must be by nature of such description.

12. Mr. Amar Singh, Deputy Engineer Superintendent, has said that the convention is that engineers and tindals share the duty of engine drivers when launches may be on duty for pretty long time. I am, however, not willing to rely upon convention only. Therefore, the Port Commissioners must make it a point in vessels mentioned in answer (iii) above, an engine driver whenever doing work for longer than usual hours, must be provided with relief if there be only one engine driver posted on such vessel or the accompanying launch. The Port Commissioners must provide accordingly. In other cases no such relief is necessary.

This is my award.

(Sd.) B. N. BANERJEE, Presiding Officer.

Dated, April 24, 1969.

[No. 28/47/68-LR(III.)]

At New Delhi, the 24th May 1969

S.O. 2061.—The following draft of a scheme to amend the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme, 1968, which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), is published as required by the said sub-section for the information of all persons likely to be affected thereby; and notice is hereby

given that the said draft will be taken into consideration on or after the 1st July, 1969.

Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be taken into consideration by the Central Government.

Draft Scheme

1. This Scheme may be called the Kandla Unregistered Dock Workers (Regulation of Employment) First Amendment Scheme, 1969.

2. In the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme, 1968—

(1) in clause 17,—

- (a) in item (i) of sub-clause (1), for the expressions "Department of Food in the Ministry of Food, Agriculture, Community Development and Co-operation of the Government of India", "Department", of Food" and "aforesaid Department", the expression "Food Corporation of India" shall be substituted;
- (b) in items (viii) and (xii) of sub-clause (1), sub-clause (2) and sub-clause (4), for the expression "Department of Food" the expression "Food Corporation of India" shall be substituted;
- (2) in Schedule I, for the expression "Ministry of Food, Agriculture, Community Development and Co-operation of the Government of India", the expression "Food Corporation of India", shall be substituted.

[No. 58/3/69-Fac.II.]

K. D. HAJELA, Under Secy.

(Department of Labour and Employment)

New Delhi, the 17th May 1969

S.O. 2062.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Iran Tea Trading Company Private Limited, 3A, Chittaranjan Avenue, Calcutta-13 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st January, 1969.

[No. 8/5/69-PF. II(I).]

S.O. 2063.—In exercise of the powers conferred by first proviso to section 6 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government, after making necessary enquiry into the matter, hereby specifies that, with effect from the 31st January, 1969, section 6 of the said Act shall in its application to Messrs Iran Tea Trading Co., Private Limited, 3A, Chittaranjan Avenue, Calcutta-13 be subject to the modification that for the words "six and a quarter per cent", the words "eight per cent" were substituted.

[No. 8/5/69-PF. II (II).]

New Delhi, the 18th May 1969

S.O. 2064.—Whereas the departmentally run establishments/factories under the control of the Department of Communications (Posts and Telegraphs Board) specified in Schedule I annexed hereto (hereinafter referred to as the said establishments/factories) have applied for exemption under clause (b) of sub-section (1) of section 17 of the Employees' Provident Funds Act, 1952 (19 of 1952);

And whereas the employees of the said establishments/factories are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the Central Government is of opinion that such benefits are on the whole not less favourable to such employees than the benefits provided under the Employees'

Provident Funds Act, 1952 (19 of 1952) and the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Act and the said Scheme respectively) in relation to employees in any other establishment/factory of a similar character;

Now, therefore, in exercise of the powers conferred by clause (b) of subsection (1) of section 17 of the said Act and subject to the conditions specified in Schedule II annexed hereto, the Central Government hereby exempts the said establishments/factories from the operation of all the provisions of the said Scheme and in pursuance of sub-section (3) of the said section 17, the Central Government hereby directs that the employer in relation to the said establishments/factories shall pay within fifteen days of the close of the month to the Employees' Provident Fund, inspection charges at the rate of 0.09 per cent (zero point zero nine per cent) of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees of the said establishments/factories who would have become members under the said Scheme but for this exemption.

SCHEDULE I

Names of departmentally run establishments/factories

1. Telecom. Factory, Calcutta.
2. Telecom. Factory, Jabalpur.
3. Telecom. Factory, Bombay.

SCHEDULE II

1. The employer shall submit such returns to the Regional Provident Fund Commissioner as the Central Government may, from time to time, prescribe.
2. The employer shall furnish to each employee an annual statement of account or Pass Book.
3. All expenses involved in the administration of the fund including the maintenance of accounts, submission of accounts and returns, transfer of accumulations, payment of inspection charges etc., shall be borne by the employer.
4. Where an employee who is already a member of the Employees' Provident Fund (Statutory Fund) or the Provident Fund of another exempted establishment is employed in his establishment, the employer shall immediately enrol him as a member of the Fund of the establishment, and accept the past accumulations in respect of such employee and credit to his account.
5. The employer shall enhance the rate of Provident Fund contribution appropriately if the rate of provident fund contributions for the class of establishment in which his establishment falls is enhanced under the said Act, so that the benefits under the Provident Fund Scheme of the establishment shall not become less favourable than the benefit provided under the said Act.
6. Notwithstanding anything contained in the provident fund rules of the establishment if the amount payable to any member, upon his ceasing to be an employee of the establishment or transferable on his transfer to any other establishment by way of employer's and employees' contributions plus interest thereon taken together with the amount, if any, payable under the Gratuity/Pension Rules, be less than the amount that would be payable as employer's and employees' contributions plus interest thereon, if he were a member of the Provident Fund under the said Scheme, the employer shall pay the difference to the members as compensation/special contribution.
7. No amendment of the provident fund rules shall be made without the previous approval of the Central Provident Fund Commissioner. Where any amendment is likely to affect adversely the interests of the employees, the Central Provident Fund Commissioner shall, before giving his approval give a reasonable opportunity to the employees to explain their point of view.

New Delhi, the 21st May 1969

S.O. 2065.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Shri B. K. Gogate to be an Inspector for the whole of the State of Maharashtra for the purposes of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of, the Central Government, or in relation to any establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. 21(8)/69-PF. I(i).]

S.O. 2066.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby rescinds the notifications of the Government of India in the late Ministry of Labour and Employment No. S.O. 1198, dated 22nd May, 1961 and No. S.O. 1598, dated the 17th June 1961.

[No. 21(8)/69-PF. I (ii).]

S.O. 2067.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), and in supersession of the notification of the Government of India in the late Department of Social Security No. S.O. 3595, dated the 30th September, 1964, the Central Government hereby appoints Shri V. A. Lakshmipathy to be an Inspector for the purpose of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government or in relation to any establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. 20(17)/69-PF. I.]

S.O. 2068.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952) and in supersession of the Notification of the Government of India in the late Ministry of Labour and Employment S.O. No. 1701 dated the 25th May, 1962, the Central Government hereby appoints Shri K. N. Shukla to be an Inspector for the whole of the State of Gujarat for the purposes of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government or in relation to any establishment connected with a railway company, or a controlled industry.

[No. 20(62)/64-PF. I.]

S.O. 2069.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Sarvashri D. N. Tewari and S. S. Agarwal to be Inspectors for the whole of the State of Uttar Pradesh for the purposes of the said Act and of any Scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government or in relation to any establishment connected with a railway company, a mine or an oil-field or a controlled industry.

[No. 21(4)/68-PF. I.]

New Delhi, the 23rd May 1969

S.O. 2070.—In exercise of the powers conferred by clause (c) of sub-section (1) of section 5A of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints the Secretary to the Government of Tamil Nadu, Labour Department, as a member of the Central Board of Trustees, and make the following further amendment in the notification of the Government of India in the late Department of Social Security No. S.O. 1156, dated the 1st April, 1965, namely:—

In the said notification, against item 12, for the existing entry in the first column, the following entry shall be substituted, namely:—

“The Secretary to the Government of Tamil Nadu Labour Department, Madras.”

[No. 12(2)68-PF-II]

S. O. 2071.—In pursuance of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby sets up a Regional Committee for the State of Mysore, consisting of the following persons, namely:—

Chairman

1. The Secretary to the Government of Mysore, Food, Civil Supplies and Labour Department, Bangalore.

Appointed by the Central Government.

Members

2. The Labour Commissioner, Government of Mysore, Bangalore.	Persons appointed by the Central Government on the recommendation of the State Government.
3. The Deputy Secretary to the Government of Mysore, Finance Department, Bangalore.	Representatives of employers appointed by the Central Government in consultation with the Organisations of employers in the State.
4. Shri M. K. Panduranga Setty, Chairman, All India Manufacturers' Organisation (The Mysore State Board), Partner, Krishna Flour Mills, Platform Road, Bangalore-23.	
5. Shri Y. N. Gangadhara Setty, President, Mysore Chamber of Commerce, Bangalore-9.	Representatives of employees appointed by the Central Government in consultation with the Organisations of employees in the State.
6. Shri A. M. Basave Gowda, Chairman, Mysore State Planters Association, Thippayahalli Estate, Chickmagalur.	
7. Shri K. B. Thimmaiah, President, Indian National Trade Union Congress, Balaji Estate, Nayamudi P. O., Goni Koppal, Coorg District.	
8. Shri D. Venkatesh, Central Secretary, A/19 Bhasma Road, Bangalore-2.	
9. Shri A. Venkataram, Secretary, Barthiya Mazdoor Sangh, Subedarchatram Road, Bangalore-9.	

[No. PFII 10(3)/59.]

S.O. 2072.—In pursuance of clause (e) of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints Dr. Mohanlal Piramal as a member of the Regional Committee for the State of Maharashtra vice Shri Gopikisan Piramal and makes the following further amendment in the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 1280, dated the 27th May, 1961, namely:—

In the said notification, for the existing entry against serial number 10, the following entry shall be substituted, namely:—

“10. Dr. Mohanlal Piramal, Morarjee Goculdas Spinning and Weaving Company Limited, Dr. Ambedkar Road, Parel, Bombay-12.”

[No. 12(2)65-PF.II.]

S.O. 2073.—Whereas the establishments under the control of the Ministry of Defence, Government of India (hereinafter referred to as the said establishments) have applied for exemption under clause (b) of sub-section (1) of section 17 of the Employees' Provident Funds Act, 1952 (19 of 1952);

And whereas, the employees of the said establishments are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the Central Government is of opinion that such benefits are on the whole not less favourable to such employees than the benefits provided under the Employees' Provident Funds Act, 1952 (19 of 1952) and the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Act and the said Scheme respectively) in relation to employees in any other establishment of a similar character;

Now, therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in the Schedule annexed hereto, the Central Government hereby exempts, with immediate effect, the said establishments from the operation of all the provisions of the said Scheme and in pursuance of sub-section (3) of the said section 17, the Central Government hereby directs that the said establishments shall pay within fifteen days of the close of each month to the Employees' Provident Fund inspection charges at the rate of 0.09 per cent (Zero point zero nine per cent) of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of

food concession admissible thereon) for the time being payable to the employees of the said establishments who would have become members under the said Scheme, but for this exemption.

SCHEDULE

1. The employer shall submit such returns to the Regional Provident Fund Commissioner as the Central Government may, from time to time, prescribe.
2. The employer shall furnish to each employee an annual statement of account or Pass Book.
3. All expenses involved in the administration of the Fund including the maintenance of accounts, submission of accounts and returns, transfer of accumulations, payment of inspection charges etc., shall be borne by the employer.
4. Where an employee who is already a member of the Employees' Provident Fund (Statutory Fund) or the provident fund of another exempted establishment is employed in his establishment, the employer shall immediately enrol him as a member of the Fund of the establishment, and accept the past accumulations in respect of such employee and credit to his account.
5. The employer shall enhance the rate of Provident Fund contribution appropriately if the rate of provident fund contributions for the class of establishments in which his establishment falls is enhanced under the said Act, so that the benefits under the Provident Fund Scheme of the establishment shall not become less favourable than the benefits provided under the said Act.
6. Notwithstanding anything contained in the provident fund rules of the establishment, if the amount payable to any member, upon his ceasing to be an employee of the establishment or transferable on his transfer to any other establishment by way of employer's and employees' contributions plus interest thereon taken together with the amount, if any, payable under the Gratuity/Pension Rules, be less than the amount that would be payable as employer's and employees' contributions plus interest thereon, if he were a member of the provident fund under the Employees' Provident Funds Scheme, 1952, the employer shall pay the difference to the member as compensation/special contribution.
7. No amendment of the rules of the provident fund shall be made without the previous approval of the Central Provident Fund Commissioner. Where any amendment is likely to affect adversely the interests of the employees, the Central Provident Fund Commissioner shall, before giving his approval, give a reasonable opportunity to the employees to explain their point of view.

[No. 11(10)/62-PF.II.]

S.O. 2074.—In exercise of the powers conferred by section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 2551, dated the 9th August, 1966, namely:—

In the said notification, under the heading “[Nominated by the State Governments under clause (d) of section 4]” in the entry against item 14, for the words “Additional Secretary to the Government of Madras, Industries, Labour and Housing Department, Madras”, the words “Secretary to the Government of Tamilnadu in the Labour and Housing Department, Madras”, shall be substituted.

[No. F. 3/2/69-HI.]

New Delhi, the 24th May 1969

S.O. 2075.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Shri B. S. Chandrasekhara to be an Inspector for the whole of the State of Andhra Pradesh for the purposes of the said Act and of any Scheme framed thereunder in relation to any establishment belonging to, or under the control of the Central Government, or in relation to any establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. 20(74)/64-PF.I.]

S.O. 2076.—Whereas it appears to the Central Government that the employers and the majority of the employees in relation to the establishment known as Messrs Parekh Agencies, Mafatlal House, Backbay Reclamation, Bombay-1 (including branches at Ahmedabad, Delhi and Calcutta) have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty first day of December, 1967.

[No. 8/33/69-PF.II.]

S.O. 2077.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Nirvan Industries (Private) Limited, Road No. K, A-18, Wagle Estate, Thana including their branch at 204, Arun Chambers, 2nd Floor, Tardeo Road, Tardeo, Bombay-34, Maharashtra State have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty first day of May, 1967.

[No. 8/29/69-PF.II.]

CORRIGENDUM

New Delhi, the 31st May 1969

S.O. 2078.—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 700, dated the 14th February, 1969, published in the Gazette of India, Part II, Section 3, Sub-section (ii), at page 674—

In the entries against Serial Nos. 1 and 2, in column 2, for "District Phagwara" read "District Kapurthala".

[No. F. 13(5)/69-HI.]

DALJIT SINGH, Under Secy.

धर्म और नियोजन विभाग

नई दिल्ली, 17 मई 1969

का० आ० 2079 :—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स ईरान ई ट्रेडिंग कम्पनी प्राइवेट लिमिटेड, 3-ए चितरंजन एवेन्यु, कलकत्ता-13 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्वारा 31 जनवरी, 1969 से लागू करती है।

[सं० 8, 5, 69 भ० न०-2(1)]

का० आ० 2080—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 6 के प्रथम परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, इस विषय में आवश्यक जांच कर लेने के पश्चात्, एतद्वारा यह विनिर्दिष्ट करती है कि उक्त अधिनियम की धारा 6, मैसर्स ईरान टी ट्रेडिंग कम्पनी प्राइवेट लिमिटेड, 3-ए चितरंजन एवेन्यू, कलकत्ता-13 को 31 जनवरी 1969 स लागू होने के सम्बन्ध में इस उपास्तरण के अव्याधीन होती कि “सवा छह प्रतिशत” शब्दों के लिए “आठ प्रतिशत” शब्द प्रतिस्थापित किए जाएं।

[सं० 8/5/69-भ० नि०-2(11)]

नई दिल्ली, 21 मई 1969

का० आ० 2081—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त अधिनियम और तदधीन विरचित किसी स्कीम के प्रयोजनों के लिये, केन्द्रीय सरकार के या उसके नियन्त्रणाधीन के किसी स्थापन के सम्बन्ध में, या किसी रेल कम्पनी, महा पत्तन, खान या तेल-क्षेत्र या नियन्त्रित उद्योग से सम्बद्ध किसी स्थापना के सम्बन्ध में श्री बी० के० गोगटे को समस्त महाराष्ट्र राज्य के लिये एन्ड्रुडारा निरीक्षक नियुक्त करती है।

[सं० 21(8)/69-भ० नि०-1(I).]

का० आ० 2082—कर्मचारी भविष्य निधि अधिनियम 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार भारत सरकार के भूतपूर्व श्रम और नियोजन मंत्रालय की अधिसूचना सं० का० आ० 1196, तारीख 22 मई, 1961 और सं० का० आ० 1593, तारीख 17 जून 1961 को एतद्वारा विरचित करती है।

[सं० 21(8)/69 भ० नि०-1(11)]

का० आ० 2083—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के भूतपूर्व समाज सुरक्षा विभाग की अधिसूचना सं० का० आ० 3595, तारीख 30 मित्स्वर, 1964 की अतिथित करते हुए, केन्द्रीय सरकार उक्त अधिनियम और तदधीन विरचित किसी स्कीम के प्रयोजनों के लिए, केन्द्रीय सरकार के या उसके नियन्त्रणाधीन के किसी स्थापन के सम्बन्ध में, या किसी रेल कम्पनी, महापत्तन, खान या तेल क्षेत्र या नियन्त्रित उद्योग से सम्बद्ध किसी स्थापन के सम्बन्ध में श्री बी० ए० लक्ष्मीप्रसीद को समर्न मैसूर राज्य के लिये, एन्ड्रुडारा निरीक्षक नियुक्त करती है।

[सं० 20(17)/69-भ० नि०-1.]

का० आ० 2084—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के भूतपूर्व श्रम और नियोजन मंत्रालय की अधिसूचना का० आ० सं० 1701, तारीख 25 मई, 1962 की अधिथित करते हुए केन्द्रीय सरकार उक्त अधिनियम और तदधीन विरचित किसी स्कीम के प्रयोजनों के लिए, केन्द्रीय सरकार के या उसके नियन्त्रणाधीन के किसी स्थान के सम्बन्ध में, या किसी रेल कम्पनी या किसी नियन्त्रित उद्योग से सम्बद्ध किसी स्थापन के सम्बन्ध में श्री के० एन० शुक्ल को समस्त गुजरात राज्य के लिये एन्ड्रुडारा निरीक्षक नियुक्त करती है।

[सं० 20(62) 64-भ० नि०-1.]

का० आ० 208५ :—कर्मचारी भविष्य निधि आधिनियम, 1952 (1952 का 19) की धारा 13 की उपचारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त अधिनियम और राष्ट्रीय विरचित किसी स्कीम के प्रयोजनों के लिए, केन्द्रीय सरकार के या उसके नियंत्रणाधीन के किसी स्थापन के सम्बन्ध में, या किसी रेल कम्पनी, खान या तेल-शेत्र या नियंत्रित उद्योग से सम्बद्ध किसी स्थापन के सम्बन्ध में सर्वश्री डी० एन० तिवारी प्रारं एस० एस० अग्रवाल को समस्त उत्तर प्रदेश राज्य के लिए एतद्वारा निरीक्षक नियुक्त करती है।

[सं० 21(4)/68-भ० नि०-1.]

नई दिल्ली, 23 मई, 1969

का० आ० 203६ :—कर्मचारी भविष्य निधि स्कीम, 1952 के पैरा 4 के उप-पैरा (1) के लाई (3) के अनुसरण में केन्द्रीय सरकार श्री गोपी कृष्ण पीड़ामल के स्थान पर डा० मोहन लाल पीड़ामल को मरुराष्ट्र राज्य की प्रादेशिक समिति का सदस्य एतद्वारा नियुक्त करती है और भारत सरकार के भूत्तर्व नियोजन मंत्रालय की अधिसूचना सं० का आ० 1286, तारीख 27 मई, 1961 में निम्नलिखित अतिरिक्त संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, क्रम सं० 10 के सामने विद्यमान प्रविष्टि के लिए निम्नलिखित प्रविष्टि अतिस्थापित की जाएगी, अर्थात् :—

“10—डा० मोहन लाल पीड़ामल,
मोरार जी गोकुलदास स्पिनिंग एन्ड बोरिंग
कम्पनी लिमिटेड,
डा० अस्वेडकर रोड, परेल,
बम्बई-12”

[सं० 12(2)/65/भ० नि०-2.]

का० आ० 203७ :—कर्मचारी भविष्य निधि स्कीम, 1952 के पैरा 4 के अनुसरण में केन्द्रीय सरकार एतद्वारा मैसूर राज्य के लिए एक प्रादेशिक समिति की स्थापना करती है, जिसमें निम्नलिखित व्यक्ति होंगे, अर्थात् —

अध्यक्ष

- सचिव, मैसूर सरकार,
स्थाय, सिविल पूर्ति और श्रम विभाग, }
बंगलौर। } केन्द्रीय सरकार द्वारा नियुक्त।

सदस्य

- श्रम शायक्त, मैसूर सरकार,
बंगलौर। } राज्य सरकार की सिफारिश पर
3. उप सचिव, मैसूर सरकार, वित्त विभाग,
बंगलौर। } केन्द्रीय सरकार द्वारा नियुक्त व्यक्ति।
- श्री एम० के पाण्डुरंग सेटी,
अध्यक्ष, अखिल भारतीय त्रिनिर्माता संग-
ठन (मैसूर राज्य बोर्ड), साक्षीदार
कृष्ण आदा मिल, प्लेटफार्म रोड,
बंगलौर-23। } नियोजकों के एंते प्रतिनिधि जो राज्य में नियोजकों
के संगठन के परामर्श से केन्द्रीय सरकार द्वारा
नियुक्त किए गए हों।

5. श्री वाई० एन० गंगाधार सेठी, अध्यक्ष, मैसूर चैम्बर एफ कामर्स, बंगलौर-9 ।

6. श्री ए० एम० ब्रासब गोडा, अध्यक्ष, मैसूर एस्टेट एसोसिएशन, विष्णवाहेली एस्टेट, चिकमागलूर

7. श्री क० बी० थिम्मेय, अध्यक्ष, इंडियन नशनल ट्रेड यूनियन काम्पेस, दाना जी एस्सेट नामुडी डॉक्याना, गोनी कोपाल, जिला कुर्ग ।

8. श्री ही० वेंकटेश, जनरल सैक्रेटरी, ए/१९ भासम रोड, बंगलौर-2 ।

9. श्री ए० वेटरम्, सचिव, भारतीय मजदूर संघ, मूदेदारवनम् रोड, बंगलौर-9 ।

कर्मचारियों के एसे प्रतिनिधि जो राज्य में कर्मचारियों के संगठनों के परामर्श से केन्द्रीय सरकार द्वारा नियुक्त किए जाए हैं।

[फा० सं० पी० एफ० 2/10(3) 58]

नई दिल्ली, 24 मई, 1969

का० आ० 2088 :—कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम और तदीन विरक्ति किसी स्कीम के प्रयोजन के लिए, केन्द्रीय सरकार के या उसके नियंत्रणाधीन के किसी स्थापन के सम्बन्ध में, या किसी तेल कम्पनी, महा-पतन, खान या तेल क्षेत्र या नियंत्रित उद्योग से सम्बद्ध किसी स्थापन के सम्बन्ध में श्री बी० एम० चन्द्र शेखर को सम्मत आनंद प्रदेश राज्य के लिए एतद्वारा नियुक्त करती है।

[सं० 20(74)/64-पी० एफ०-1]

का० आ० 2089 —यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स पारेस्ट इंडस्ट्रीज मफतलाल हाउस, वेकेवे, रिक्लेमेण्ट, मुम्बई-1 (जिसके अन्तर्गत श्रहमदावाद दिल्ली और कलकत्ता स्थित शाखाये भी हैं) नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किए जाने चाहिए :

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एप्सद्वारा लागू करती है।

यह अधिनियम 1967 के दिसम्बर के एकनीसवें दिन को प्रवृत्त हुई समझी जाएगी।

[सं० 8/33/69/भनि०-2]

का० आ० 2090 :—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स निर्वाण इंडस्ट्रीज (प्राइवेट) लि०, रोड नं० के, ए-१८, वागले एस्टेट, थाना; जिसके अन्तर्गत 204, अरुण चैम्बर्स सेक्टर ४ ओर, तारदेव रोड, तारदेव मुम्बई-३४, महाराष्ट्र राज्य स्थित उनकी शाखा आती है, नामक स्थापन

से सम्बन्धी नियोजक और कर्मचारियों की बहु संख्या इस बात पर सहमत हो गई है कि कर्मचारी अधिकारी अधिनियम, 1952 (1952 का 19) के उपर्यन्त उक्त स्थापन को लागू किए जाने चाहिए :

आतः अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार उक्त अधिनियम के उपर्यन्त उक्त स्थापन को एतद्वारा लागू करती है ।

वह अधिसूचना 1967 के मई के इन्होंने दिन को प्रवृत्त हुई समझी जायेगी ।

[सं० 8/29/79/भ०नि० -2]

दलजीत सिंह, अवर सचिव ।

(Department of Labour and Employment)

New Delhi, the 19th May 1969

S.O. 2091/PWA/Sec. 14/Mines/Oil fields/Air Transport Services.—In exercise of the powers conferred by sub-section (3) of section 14, read with section 24 of the Payment of Wages Act, 1936 (4 of 1936), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1151, dated the 16th March, 1968.

In the said notification,—

(i) in item I,—

(a) in serial No. 2, in column (2), for the entry "Deputy Chief Labour Commissioner (Central), New Delhi", the entry "Deputy Chief Labour Commissioners (Central), New Delhi" shall be substituted;

(b) in serial Nos. 3, 4 and 9, in column (2), for the words "Central Institute of Training in Industrial Relations", the words "Indian Institute of Labour Studies" shall be substituted;

(c) serial No. 5 shall be omitted;

(ii) item VII and the entries relating thereto shall be omitted and items VIII, IX, X and XI shall be renumbered as items VII, VII1, IX and X, respectively;

(iii) in item VII, as so renumbered, in the entry in column (3), the words "excluding the District of Singhbhum" shall be added at the end;

(iv) in item X, as so renumbered for the entry in column (3), the entry "The Districts of Burdwan, Birbhum, Bankura and Purulia, in the State of West Bengal" shall be substituted;

(v) after item X, as so renumbered, the following item shall be added, namely:—

xi.	Regional Labour Commissioner (Central), Bhubaneshwar.	1	The State of Orissa and the District of Singhbhum in the State of Bihar.
2.	All Assistant Labour Commissioners (Central) in Bhubaneshwar region.	2	
3.	All Labour Enforcement Officers (Central) in Bhubaneshwar region.	3	

[No. 19/1/69-Fac.I.]

J. D. TEWARI, Under Secy.

(Department of Labour and Employment)

New Delhi, the 22nd May 1969

S.O. 2092.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute

between the employers in relation to the management of Assam Railways and Trading Company Limited, Margherita, Assam and their workmen, which was received by the Central Government on the 6th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

MISCELLANEOUS APPLICATION NO. 7 OF 1968

(ARISING OUT OF REF. NO. 154 OF 1966)

PARTIES:

Shri Sudhir Ranjan Das, Medical Officer, Assam Railways and Trading Co., Margherita, Assam **Applicant.**

V.S.

The General Manager, Assam Railways and Trading Co., Margherita, Assam.—*Opp. party.*

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Applicant.—Shri Sudhir Ranjan Das, Applicant.

On behalf of Opp. Party.—Shri Pankaj Coomar Ghose Advocate.

STATE: Assam.

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act, 1947. The applicant, Sudhir Ranjan Das, was a Medical Officer under Assam Railways and Trading Company. He was dismissed from service, pending disposal of a reference to this tribunal, being Reference No. 154 of 1966. According to the applicant, the order of dismissal contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 and that induced him to make the present complaint to this tribunal.

2. In paragraphs 3, 4, 5 and 6 of his written complaint to this tribunal, the applicant stated:

"3. That the facts leading to your petitioner's dismissal is as under:

That on 16th May, 1968, your petitioner was the medical officer of the company at Borgolai hospital. On that day he forwarded a child patient suffering from gastroenteritis to Ledo hospital of the Company as there was no arrangement for treating such acute case at that hospital. On the following date, 17th May 1968, the Medical Superintendent, Margherita, sent a confidential note asking for an explanation from your petitioner as to why the child was not given injection and further why he was not forwarded to Margherita Central hospital. The applicant answered stating the circumstances in which the patient had to be forwarded to Ledo hospital. Not satisfied with his explanation—The Medical superintendent held an enquiry, which was conducted by Junior medical officers and in this enquiry the principle of natural Justice was not observed and he was not given any chance to cross-examine them or adduce evidence and after that enquiry— he was given a warning on the 7th of June 1968.

4. That thereafter on 29th June, 1968—the medical Superintendent, of the Company issued a transfer order requiring the applicant to move to Tipong Colliery of the Company. This is simply a measure of double punishment.

5. That the applicant wanted time to shift as his wife was ill—it was not granted and he was dismissed from service in violation of the provisions of the standing order of the company and in violations of the principles of natural Justice.

6. That the applicant submit that he has been dismissed from service, only because the medical superintendent of the company was biased and prejudiced against him."

On the allegations aforesaid he claimed relief.

3. In the rejoinder filed by the employer company, there was a preliminary objection taken to the effect that the applicant was not a workman. That preliminary objection is contained in paragraph 3 of the written statement, which I set out below:

"3. The Company states that the applicant, Sri Sudhir Ranjan Das is not a "workman" within the meaning of Section 2(s) of the said Act. Sri Das at all material times prior to his dismissal from service on 27th July, 1968 was employed as the Medical Officer of the Company's Baragolai Colliery and being employed in a supervisory capacity as aforesaid, Sri Das was drawing a salary of more than Rs. 500 per month as shown in details below:

Basic salary	Rs. 550.00 per month
Dearness allowance	R. 137.50 , ,
Cash compensation in lieu of food rations	Rs. 13.78 , ,
Total	Rs. 701.28 , ,

So far as merits are concerned, it was stated in paragraphs 6 and 7 of the written statement:

"6. The Company states that Shri Sudhir Ranjan Das was at all material times prior to his dismissal from service on 27th July, 1968 employed as Medical Officer in the Company's Baragolai Colliery. While so employed the Company in the usual course served him with office order No. 1081-82/MS dated 29th June, 1968 transferring Sri Das for being posted at the Company's Tipong Colliery Hospital as Medical Officer-in-charge of the said Tipong Hospital with effect from 4th July, 1968. In reply to the said office order, Sri Das by his letter dated 1st July, 1968 intimated various difficulties that stood in the way of his moving to Tipong and requested the Company to grant him two month's time to do so. The Company was unable to accede to his unreasonable and unjustified request and by its letter dated 3rd July, 1968, intimated to Sri Das that the office order dated 29th June, 1968 had to be complied with by Sri Das otherwise the Company would be forced to adopt disciplinary proceedings against him. Sri Das did not comply with the said lawful and reasonable order of the superior and by his letter dated 3rd July, 1968 intimated to the Company his inability to move to Tipong Colliery Hospital.***

7. As the aforesaid act on the part of Sri Das constituted misconduct under the Clause 10, Section (c), Sub-section (1) of the Company's Standing Orders the Company on 4th July, 1968 served him with a charge-sheet charging him with the following offence in that on the morning of 4th July, 1968 at about 7.30 a.m., (local time) when Dr. D. B. Ghosh went to take charge of the Baragolai Dispensary, as per Office Order No. 1081-82/MS of 29th June, 1968, Sri Sudhir Ranjan Das refused to hand over charge and Dr. D. B. Ghosh had to come back. Thus Sri Das violated the transfer order, *vide* Order No. 1081-82/MS of 29th June, 1968 and put all concerned in great difficulty. Dr. D. B. Ghosh who went to Baragolai Dispensary to take over charge from Sri S. R. Das returned back when Sri Das refused to hand over charge. Dr. Ghosh submitted a report to the management on 4th July, 1968, to that effect. Sri Das by the said charge-sheet was asked to submit his explanation within three days of the receipt of the chargesheet. Since the charge levelled against Sri Das was of serious nature he was suspended with immediate effect pending enquiries into the matter. Sri Das in his reply dated 5th July, 1968 denied the charges."

As regards, the enquiry, it was stated in paragraph 9 of the written statement:

"On 12th July, 1968, an enquiry into the charges against Sri Das was held in accordance with the procedure laid down in the Standing Orders

in which Sri Das took part. The Company's witnesses were examined one after the other and were offered for cross-examination by Sri Das. Sri Das however, declined to cross-examine the said witnesses and made a statement relying upon his written explanation and further declined to examine any defence witness. At the said enquiry Sri Das was given all fair and reasonable opportunity to defend himself by cross-examining of the Company's witnesses, by producing defence witnesses and by making statements in defence. The proceedings were recorded and Sri Das put his signature on every page of the recorded minutes. The Enquiry Officer after a careful consideration of the chargesheet, the reply thereto and the proceeding at the enquiry came to the conclusion that Sri Das was guilty of the charges levelled *viz.* wilful disobedience to a lawful and reasonable order of his superior and recommended that Sri Das be dismissed from service with immediate effect."

In paragraph 10 of the written statement it is stated that an appeal against the penal order passed against the applicant stood dismissed by the General Manager. It was lastly stated in paragraph 16 of the written statement:

"16. ***The Company states that the said order of transfer was fair and reasonable and issued in the usual course in exercise of the Company's discretion in the matter of transfer of its personnel from one place to another. Sri Das violated the said lawful and reasonable order of his superior which constituted misconduct under Clause 10, Section (c) Sub-section (1) of the Standing Orders. A charge-sheet was accordingly served on him and a departmental enquiry followed. The Company dismissed Sri Das from the services of the Company with effect from 27th July 1968 on the basis of the findings of the departmental enquiry as hereinbefore stated.

It is denied that the applicant was dismissed from service in violation of the provisions of the Standing Orders of the Company and in violation of the principles of natural justice as alleged in paragraph 5 of the petition or at all. It is further denied that the applicant has been dismissed from service only because the Medical Superintendent of the Company was biased and prejudiced against him as alleged in paragraph 6 of the petition or at all."

In the background of these pleadings, I have to decide the complaint made before this tribunal.

4. It was contended, on behalf of the applicant, that the order of dismissal had been passed during the pendency of a proceeding before this tribunal but no application for approval of the order of dismissal was made before this tribunal, under the provisions of Section 33(2) (b) of the Industrial Disputes Act. It was submitted that this made the order *prima-facie* bad and that this Tribunal must set aside the order.

5. Mr. Pankaj Coomar Ghose, learned advocate for the employer company, sought to repel this argument with the contention that even if no application under Section 33(2)(b) of the Industrial Disputes Act had been made, it was open to this tribunal to examine the case on the merits and, if satisfied that the order of dismissal had been properly made, to uphold the order on merits. In support of this proposition, he firstly relied upon a judgment of Supreme Court in *Punjab National Bank vs. their workmen* (1959) II LLJ 66 in which Gajendra-gadkar, J (as he then was) observed:

"Thus there can be no doubt that in an enquiry under Section 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. If there is such contravention proved, it will still be open to the employer to justify the impugned dismissal on merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is industrial dispute and all the relevant aspect of the dispute fell to be considered under Section 33A".

He also relied upon a single judge decision of the Calcutta High Court in *Ram Chandra Pal v. Titaghur Paper Mills and others* (-965) II LLJ 226, in which the following passage appears:

"The whole question of legality or illegality of the discharge of the employee is in issue under Section 33A and is to be disposed of as an industrial dispute independently by the tribunal under Section 10

of the Act dealing with a pending dispute. Indeed, if there is no contravention of Section 33 of the Act, Section 33A does not at all operate and therefore, the fact of contravention of Section 33 gives jurisdiction to entertain the proceeding under Section 33A of the Industrial Disputes Act. On the question of application under Section 33A, I have expressed generally by views in the case of Mcleod & Co. v. Sixth Industrial Tribunal, West Bengal, and others (A.I.R. 1958 Cal. 273) and I consider it unnecessary here to repeat what I said there. All that I need cite at this stage is the subsequent Supreme Court decision in the case of Delhi Cloth and General Mills Company Ltd. v. Sri Rameshwar Dayal (1960-II L.L.J. 712). This present argument of the learned counsel for the petitioner cannot succeed after that decision. It is now clearly laid down by the Supreme Court in that decision, that in an enquiry under Section 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 of the Act by the employer."

"This being the law, I have to over-rule the preliminary point urged on behalf of the applicant.

6. I have next to deal with a preliminary objection urged by Mr. Pankaj Coomar Ghose on behalf of the employer. He contended, on the basis of the materials in paragraph 3 of the written statement and also on the basis of the following passage of evidence of Satya Narayan Chatterjee, Medical Superintendent of the employer company:

"He used to get Rs. 6 as Cycle allowance, less proportionate deduction for days on leave, Rs. 137 50 paise as dearness allowance, Rs. 13.78 paise as food concession, Rs. 20/- as servant allowance over and above the basic wages of Rs. 550/-, making a total of Rs. 728/- (Wage bill marked Ext. 1)."

that the applicant was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and as such he was not entitled to any relief under the Industrial Disputes Act. The definition of workman under Section 2(s) reads:

"2(s) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) ***

(ii) ***

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or excrise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

In explaining the provisions of Section 2(s) it was observed by Hidayatullah, J. (as he then was) in *All India Reserve Bank Employees' Association and another vs. Reserve Bank of India and another* (1965) II LLJ, 175 (at 186-87):

***The amending Act of 1958 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in Clause (iv) partly because the draftsman followed the language of Clause (iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and Clause (iv) was expressly preserved by using the word 'such' twice in the opening part. The words, which bind the two parts, are not—"but does not include any person". They are 'but does not include any person'

showing clearly that what is being excluded is a person who answers the description 'employed to do supervisory work and he is to be excluded because being employed in a supervisory capacity he draws wages exceeding Rs. 500 per month or exercises functions of a particular character. ***the amending Act of 1956 in our country was passed to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen, employed on supervisory work. 'Workmen' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who does not answer the description 'employed to do supervisory work' but one who does answer that description. He goes out of the category of 'workman' on proof of the circumstances excluding him from the category."

That the applicant, in the instant case, was drawing wages above Rs. 500/- admits of no doubt. Question is whether he was employed in a supervisory capacity or whether by reason of the powers vested in him his functions were mainly of a managerial nature. On this point, Dr. Satya Narayan Chatterjee gave elaborate evidence. in his examination-in-chief, he stated:

"He used to have two pharmacists and two dressers under him at Bargolai dispensary. He also had one pharmacist and one dresser at another dispensary at Tilak also under him. Dr. Das as Medical Officer of Bargolai dispensary was directly in charge of them. The medical staff get one day as weekly rest day. Dr. Das used to decide which day would be the rest day for which one of the staff. Dr. Das was not entrusted with any clerical work. He used to write out prescriptions in his own hands. Dr. Das was not entitled to any overtime wages."

He further said that besides being the medical officer, the work entrusted to Dr. Das was administrative work. Nevertheless, Dr. Chatterjee admitted in his examination in chief:

"I am the Head of the medical staff under Assam Railway & Trading Company.***"

To Tribunal:

At times I go to inspect the dispensaries. I go there to find out whether the Medical Officers are doing work properly and also whether the dispensaries are being maintained properly. At time I ought to check up the stock kept in the dispensaries. I have never carried out physical verification of the stock. I generally depend on the signature of the Medical Officer."

In cross-examination Dr. Chatterjee further said:

"Under the rules of the company, medical staff get one day as weekly off day and the Medical Officer settles which one is to be off and which day. It is not always that medicine indents were made by the Medical Officer of Bargolai dispensary in his own hand. Pharmacists often used to do that and the Medical Officer used to sign that. It may be that Overman, Deputy Overman and Head clerk also get casual leave. I never sanctioned leave for one hour or half an hour. To grant half day casual leave is an existing practice in all units. It is true that casual leave cannot be sanctioned by the Medical Officer."

7. Considering the evidence of Dr. Chatterjee as a whole, I cannot induce myself to believe that the work of Dr. Das was either managerial in nature or wholly supervisory in character. He was much low down in the hierarchy and the Medical Superintendent was the real manager of the show. In the view that I take, I am disinclined to hold that the applicant was not a workman falling outside the definition of Section 2(s) of the Industrial Disputes Act and as such not entitled to the benefits of the Industrial Disputes Act.

8. I now turn to the merits of the case. This I have to do because the necessary approval of this tribunal under Section 33(2) (b) of the Industrial Disputes Act was not obtained at the time when the order of dismissal was made. It appears that there was an order of transfer made on June 28, 1968 calling upon the

applicant to report for duty at Tipong hospital from Baragolai dispensary (Ext. 2). On receipt of the order of transfer, the applicant made an application dated July 1, 1968 (Ext. 3), for postponement of the order of transfer, in the following language:

"With reference to you Office Order No. 1081-82/MS dated 29th June, 1968, which I have received on 30th June, 1968, I beg to state that now it is very difficult on my part to move to Tipong Colliery hospital within these short time because my wife is sick at present and moreover she is working as a Head Mistress at the Baragolai Colliery M. E. Cum-L.P. School and she has not been provided with any quarter and I have to arrange accommodation here for her.

I have got some financial difficulties which I have to meet before going to Tipong Colliery Hospital.

Therefore, I request your honour to kindly grant me two months time from this date for which act of kindness I shall ever pray."

This application was rejected, on July 3, 1968 (Ext. 4), in the following language:

"Please note my order No. 1081-82/MS dated 29th June, 1968 still holds good. If you do not move on the stipulated date and time, I will be forced to take disciplinary action against you."

In spite of warning contained in the above letter, the applicant made the same prayer again for postponement of the order of transfer, by another application dated July 3, 1968 (Ext. 5). He did not allow Dr. D. B. Ghose, who was sent to relieve him at Baragolai to take charge of the Baragolai dispensary (Ext. 6). Thereupon, the following chargesheet (Ext. 7) was served upon the applicant:

"On the morning of 4th July, 1968 at about 7.30 a.m. (local time) when Dr. D. B. Ghosh, went to take charge of the Baragolai Dispensary, as per my Office Order No. 1081-82/MS of 29th June, 1968 you refused to hand over the charge and Dr. D. B. Ghosh had to come back. Thus you have violated the transfer order *vide* my Order No. 1081-82/MS of 29th June, 1968 and put all concerned in great difficulty.

You are hereby rejoined to submit a written statement within three days from the date of receipt of this notice showing why disciplinary action should not be taken against you.

Since the charge levelled against you is of serious nature, you are hereby suspended with immediate effect pending final order in the matter."

The enquiry into the chargesheet was held, as appears from the proceedings marked Ext. 10, in the presence of the applicant. He was given opportunity to cross-examine witness but he declined to cross-examine. He was found guilty of the charge and the enquiring officer recommended his dismissal. The order of dismissal was then passed.

9. In his evidence before this Tribunal, the applicant said I find fault with the enquiry "for the reason that the chargesheet was served by the Superintendent and he became the enquiring officer and therefore he must have become biased against me. This is my sole grievance". There is no other evidence of bias against the enquiring officer. In my opinion, the grievance of bias is only an apprehension, very cheaply levelled against the enquiring officer. I am not impressed by the charge of bias and make little of it. He also pleaded several domestic difficulties of his own which, he said, prevented him from complying with the order of transfer. In the first place, he alleged that his wife was a school mistress and was residing with him. She would not be in a position to leave for Tipong with him. If he was required to vacate his quarters at Baragolai, she would have no other place to reside in. In the next place, he had bazar debts and unless those debts were cleared off he would not be in a position to move. In cross-examination, however, he made a different case about his wife. He said that the school was closed for vacation but because she was ill she was unable to move. I wonder how a medical practitioner was unable to remove his wife to a hospital, where he was being transferred as the doctor-in-charge. At last, the applicant admitted, 'I could have taken her and got her admitted at Tipong hospital'. Thus, his first domestic difficulty appears to be unsubstantial. The school domestic difficulty as pleaded by him is equally so. He stated in cross examination that his indebtedness was so high that one month's salary would not clear of his dues. If that was so, his was a case of chronic insolvency and why he should be allowed to wait indefinitely to clear up his large indebtedness passes my comprehension. I am, therefore, of the opinion that he had no justifiable ground to oppose the order of transfer. It thus appears, that there was a lawful order of transfer made on

the applicant. He did not comply with the lawful order. He was charged with misconduct and in my opinion rightly so. The enquiry that was held against him was a proper enquiry and observed the rules of natural justice. The plea of bias levelled against the enquiring officer was wholly unsatisfactory. Therefore, there was no contravention of the rules of justice in dismissing him.

10. I therefore find little substance in the application made before this tribunal and in the grievance therein contained. I, therefore, dismiss this application with the observation that the order of dismissal made against the applicant was a correct and proper one.

11. The applicant has not been paid his dues, by the employer. That was offered but not collected by the applicant. The amount due to him is mentioned in Exhibit D to the Rejoinder filed by the employer before this Tribunal. The employer agrees to pay the amount to the applicant on any day the applicant may call at the office mentioned in Ext. D, with previous notice to the employer. Let this be done.

This is my award.

Sd./- B. N. BANERJEE,
Presiding Officer.

Dated, April, 23, 1969.

[No. 1/44/67-LRII.]

S.O. 2093.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the management of 1/12 and 2/12 Inclines of Kendwadih Colliery of Messrs East Indian Coal Company Limited and Messrs G. S. Atwal and Company (Asansol) Raising and Selling Agents of said East Indian Coal Company Limited and their workmen, which was received by the Central Government on the 13th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 241 OF 1967.

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the management of 1/12 and 2/12 Inclines of Kendwadih Colliery of Messrs East Indian Coal Company Limited and Messrs G. S. Atwal & Company (Asansol) Raising and Selling Agents of the said East Indian Coal Company Limited on the one hand.

AND

Their workmen on the other hand.

APPEARANCES:

On behalf of the 1st employer: Shri S. S. Mukherjee, Executive Committee Member, Raniganj Chamber of Commerce.

On behalf of the 2nd employer: Shri B. K. Lath, Labour Adviser.

On behalf of the workmen: Shri Lalit Burman, General Secretary, Bihar Koyal Mazdoor Sabha.

STATE: Bihar

Dhanbad 8th May, 1969.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the management of 1/12 and 2/12 Inclines of Kendwadih Colliery of Messrs East Indian Coal Company Limited and Messrs G. S. Atwal and Company (Asansol) Raising and Selling Agents of the said East

Indian Coal Company Limited on the one hand and their workmen, on the other hand by its order No. 2/55/67-LRII dated 5th July 1967 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication. The dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the management of 1/12 and 2/12 Inclines of Kendwadih Colliery (Post Office Kusunda, District Dhanbad) of Messrs East Indian Coal Company Limited and Messrs G. S. Atwal and Company (Asansol), Raising and Selling Agents of the said East Indian Coal Company Limited were justified in refusing employment to Shri Amar Singh, Overman on and from 14th July 1966? If not, to what relief is the workman concerned entitled?"

2. Employers as well as the workmen filed their statements of demands. Employer No. 2 filed a rejoinder also to the statement of the workmen.

3. Shri Amar Singh (hereinafter referred to as the affected workman) was a Overman of 1/12 and 2/12 Inclines of Kendwadih Colliery. M/s. East Indian Coal Company Ltd. (hereinafter referred to as employer No. 1 for convenience) are the proprietors and M/s. G. S. Atwal & Co. (hereinafter referred to as employer No. 2 for convenience) were Raising and Selling Agents of employer No. 1. The affected workman proceeded on sanctioned leave from 23rd May, 1966 to 27th May, 1966. But he sought extension of leave on the ground of his sickness. The management sent a letter to the affected workman to report for duty by 18th July 1966 and informed him that in default action would be taken against him for terminating his services. The affected workman reported for duty on 14th July 1966 and submitted a medical certificate in proof of his being sick. But the management did not allow him to resume duty. On 20th July 1966 the management issued a letter to the affected workman informing him that he was charged for remaining absent without permission or authorised leave from 28th May, 1966 to 13th July, 1966 and that he should show cause within 48 hours as to why disciplinary action should not be taken against him. The affected workman submitted his explanation. On 23rd July, 1966 the Manager of employer No. 1 issued a letter cancelling the authorisation issued to the affected workman. Thus, the affected workman was made idle on and from 14th July 1966. These facts are not in dispute. The case of the workmen is that the idleness imposed on the affected workman by employer No. 2 by their refusal of permission to allow the affected workman to resume duty and the order of the Manager of employer No. 1 cancelling the authorisation issued to the affected workman were illegal and unjustified. Employer No. 2 took a legal objection at the outset to the Reference stating that they being Raising and Selling Agents, the Central Government was not the appropriate Government to refer the dispute for adjudication. On merits they pleaded that inasmuch as employer No. 1 cancelled the authorisation issued to the affected workman, the affected workman could not be permitted to work and that employer No. 1 are solely responsible for the consequences. Employer No. 1 also raised a legal objection in their statement that they were not "employers" as contemplated by Section 2(k) of the Industrial Disputes Act, 1947 and as such they were unnecessarily made a party to the Reference. On merits, their case is that employer No. 2 being Raising and Selling Agents appointed their own workmen and staff and were paying them wages and other emoluments, that the affected workman was neither employed by employer No. 1 nor did employer No. 1 refuse employment to him on and from 14th July, 1966, that the Deputy Chief Inspector of Mines (North Zone) informed employer No. 1 that the appointment of the supervisory staff by employer No. 2 directly went against the statute and directed that the action be taken to remove the defects, that in pursuance of the above direction employer No. 1 issued a letter to the affected workman and 15 others asking them to take appointment from employer No. 1, that the affected workman and 3 others did not accept the offer made by employer No. 1 and that as such, employer No. 1 withdrew the authorisation of the affected workman. In short, the case of employer No. 1 is that the affected workman was not entitled to any relief against them. The workmen were represented by Shri Lalit Burman, General Secretary, Bihar Koyal Mazdoor Sabha, the 1st Employer by Shri S. S. Mukherjee, Executive Committee Member, Raniganj Chamber of Commerce and 2nd employers by Shri D. K. Lath, Labour Adviser. On admission by both the employers Exts. W1 to W5 for the workmen and Exts. M 1 to M 3 for the employer No. 1 on admission by the workmen and employer No. 2 were marked. On behalf of the workmen a witness was examined. Employer No. 1 also examined a witness and marked Exts. M. 4 to N 7. No witness was examined and no document was marked for employer No. 2.

4. I propose to deal with the legal objections taken by the employers before considering the case on its merits. It is contended for employer No. 1 that the affected workman was an employee of employer No. 2, that there was no relation of employer and employee between employer No. 1 and the affected workman, that employer No. 2 being Raising and Selling Agents were appointing their own workmen and staff, dismissing, controlling and dealing with them as employers and were also responsible for payment of proper wages and other emoluments, that employer No. 1 were not "employers" for the purpose of Section 2(k) of the Industrial Disputes Act, 1947, and that they were made a party to the Reference unnecessarily. The contention of employer No. 2 is that employer No. 1 cancelled the authorisation of the affected workman and as such, the affected workman could not be permitted to continue his work. Thus, the objection raised by employer No. 1 involves in it the mixed question of law and fact. Section 2(k) of the Industrial Disputes Act, 1947 defines "industrial dispute" and not "employer". Section 2(k) is of little help for finding out the meaning of the term "employer". Section 2(g) provides the definition of the word "employer". But this definition is not exhaustive and is confined only to the meaning of the term in relation to an industry carried on by or under the authority of any department of the Central Government or State Government or on behalf of a local authority. Whatever be the pleadings, it emerges from the material on record that the employer No. 2 had appointed the affected workman, that the necessary authorisation to him as an overman as required under the Coal Mines Regulations, 1957 was issued by employer No. 1 and that it was employer No. 1 who had cancelled the authorisation. Ext. M4 is a letter from the Managing Agents of employer No. 1 addressed to employer No. 2 stating therein that appointment of the underground supervisory staff were being made by employer No. 2, that employer No. 1 had been informed by the Deputy Chief Inspector of Mines (North Zone) that such action was contrary to statute and illegal and that employer No. 2 should dismiss all the 16 employees mentioned in the letter. The affected workman is one of the 16 employees mentioned in the letter. Ext. M5 is a letter issued by MW. 1 in the capacity of the Assistant Chief Mining Engineer of employer No. 1 to the affected workman and 3 others stating that his appointment under employer No. 2 was contrary to the statute, that it was objected to by the Deputy Chief Inspector of Mines (North Zone) and that as he did not terminate his employment with employer No. 2 and apply to employer No. 1 for fresh employment his authorisation had been withdrawn. Ext. M6 is an important letter proved by MW. 1 as signed by Shri Bhupendra S. Atwal, Partner of employer No. 2. It is in protest to the letter by the Manager of employer No. 1 cancelling authorisation issued to the staff who were working as overmen, mining sirdars, short flers, etc., in the mines under employer No. 2. The letter categorically states repeatedly that in accordance with the terms of the agreement employer No. 2 had been and were appointing all the mining staff directly themselves and that they were competent to make such appointments inasmuch as they were Agents under the terms of the contract. Under Regulation 36 of the Coal Mines Regulations, 1957 it is the duty of every Manager on taking over charge of a mine to satisfy himself that all persons already appointed are competent to perform the duties assigned to them; and if he finds them competent he should either countersign their authorisation or issue fresh ones. MW. 1 also says that if an overman is appointed it is necessary that he should be issued appointment letter as well as authorisation; the appointment letter by the company appointing him and the authorisation by the Manager in accordance with the mining rules. From the evidence of MW. 1 it also emerges that employer No. 1 has under them a Chief Mining Engineer, Assistant Chief Mining Engineer and Agent Manager and an Assistant Manager. MW. 1 further deposed that if an authorisation of an overman is cancelled he cannot work underground as an overman. Admittedly employer No. 1 has cancelled the authorisation of the affected workman and rendered him incapable of performing his duties as an overman underground. In this connection I should like to refer to the definition of "owner" as provided in Section 2(1) of the Mines Act, 1952. It is as follows:

"'Owner', when used in relation to a mine, means any person who is the immediate proprietor or lessor or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is

merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability."

In view of the above provision of law and also the facts emerging from the evidence I cannot agree that employer No. 1 is made a party to the Reference unnecessarily or that employer No. 1 is not responsible to any extent in rendering the affected workman idle from 14th July, 1966. The objection of employer No. 1 is, therefore overruled.

5. The objection of employer No. 2 is that they are only Raising and Selling Agents and as such, the Central Government was not the appropriate Government in relation to their establishment to make a Reference in respect of the dispute between them and their workmen. The objection can be disposed of with reference to the awards passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur in Reference Nos. 62 and 64 of 1964 dated 26th December, 1967, Exts. M2 and M3. In both the cases employers 1 and 2 and their workmen represented by Shri Lalit Burman, Secretary, Bihar Koyal Mazdoor Sabha were parties. In those two cases also employer No. 2 had raised the same legal objection and the objection was over-ruled by holding that employer No. 2 shall be deemed to be "owner" within the meaning of Section 2(1) of the Mines Act, 1952. Section 11 of the Code of Civil Procedure may not apply in terms to the proceedings before an Industrial Tribunal, but the principle of res judicata involved in it cannot be ignored. Consequently, I over-rule the objection of employer No. 2.

6. As I have already pointed out, it is an admitted fact that the affected workman proceeded on sanctioned leave from 23rd May, 1966, to 27th May, 1966, and applied for extension of the leave owing to his sickness, that he was directed by employer No. 2 through their letter dated 8th July, 1966, Ext. W. 1 to report for duty latest by 18th July, 1966, that the affected workman reported for duty on 14th July, 1966, that he was not permitted to resume duty on 14th July, 1966, and that through the letter dated 20th July, 1966, Ext. W.2 employer No. 2 charged the affected workman for remaining absent without permission or authorised leave from 28th May, 1966, to 13th July, 1966, and called upon him to show cause within 48 hours as to why disciplinary action should not be taken against him for the above misconduct. It is also admitted that no disciplinary proceeding was started in respect of the charge-sheet, Ext. W.2. Thus, there is no reasonable explanation why employer No. 2 refused employment to the affected workman on and from 14th July, 1966. It is contended for employer No. 2 that employer No. 1 had cancelled the authorisation to the affected workman and as such, employer No. 2 could not permit the affected workman to resume duty on 14th July, 1966. Firstly, no such plea was taken at any time either before the Assistant Labour Commissioner or in the statement before this Tribunal. Secondly, the material on record does not show that the authorisation of the affected workman was cancelled at any time before 18th July, 1966, when Ext. M5 was said to have been issued. Thus, there was absolutely no justification on the part of employer No. 2 in refusing employment to the affected workman on and from 14th July, 1966, to at least 18th July, 1966. Ext. M5 addressed to the affected workman and 3 others states that their authorisation had been withdrawn thereby because he had not accepted the offer made by employer No. 1 through the letter dated 7th July, 1966, Ext. M7 to give him fresh employment if the affected workman terminated his employment with employer No. 2. Ext. M7 dated 7th July, 1966, is one more letter said to have been addressed to the affected workman and 15 others putting forth the same offer as in Exts. M4, M5 and M7 are not admitted by the workmen. The affected workman, WW 1 has stated on oath that he did not receive any letter addressed to him and 15 other supervisory staff from employer No. 1 asking them to take authorisation letters or that employer No. 1 had called upon him and others to leave the service of employer No. 2 and take it under employer No. 1. Thus, the onus was lying on employer No. 1 to prove that Exts. M4, M5 and M7 were sent to the affected workman and received by him. The solitary witness, MW 1 examined on behalf of employer No. 1 has conceded that no letter offering the affected workman appointment under employer No. 1 was issued by him and that he did not satisfy himself from the affected workman that Ext. M7 was received by him before he cancelled his authorisation. He further deposed that he sent the letter addressed to the affected workman by registered post, but he did not remember if he had received the acknowledgement from the affected workman in respect of the letter. His statement is that other workmen mentioned in Ext. M7 had told him that the affected workman had received the

letter and that the affected workman did not want the appointment offered. But no such workman is examined. Thus, there is no evidence that in spite of receiving Exts. M4 and M7 the affected workman did not accept the offer and on that ground employer No. 1 were justified in cancelling his authorisation through the letter, Ext. M5. Further, no convincing reason is put forth why employer No. 1 cancelled the authorisation of the affected workman, when he was discharging his duties as overman since 1963 and holding proper authorisation. In Exts. M4, M5 and M7 it was stated that employer No. 1 had received a letter from the Deputy Chief Inspector of Mines (North Zone) stating that appointment of the affected workman and other supervisory staff by employer No. 2 was contrary to the statute. The letter of the Deputy Chief Inspector of Mines is not produced nor any provision of any statute is referred to under which such appointment by employer No. 2 was prohibited. In these circumstances I find force in the contention of the workmen that owing to some internal dispute interse employers, employer No. 1 thought it fit to cancel the appointments of the supervisory staff made by employer No. 2 and make fresh appointments of the staff as their own. However, I do not find any justification for cancellation of the authorisation of the affected workman as an overman by employer No. 1 and deprive him of his appointment. The idleness imposed on the affected workman by employer No. 1 by cancelling his authorisation and by employer No. 2 by their refusal of permission to allow him to resume duties are illegal and unjustified.

7. I, therefore, find that the management of 1/12 and 2/12 Inclines of Kendwadih colliery (Post Office Kusunda, District Dhanbad) of employer No. 1, Messrs East Indian Coal Company Ltd., and employer No. 2, Messrs G. S. Atwal and Company (Asansol), Raising and Selling Agents of employer No. 1 were not justified in refusing employment to the affected workman Shri Amar Singh, overman on and from 14th July, 1966, and consequently, he is entitled to reinstatement in his previous job by employer No. 1, Messrs East Indian Coal Company Ltd., and to his back wages and other emoluments from 14th July, 1966 to 18th July, 1966 from employer No. 2, Messrs G. S. Atwal and Company (Asansol) and from 19th July, 1966 to the date of his actual reinstatement from employer No. 1 Messrs East Indian Coal Company Ltd. Each of the employers to pay Rs. 100/- as costs of the affected workman. Award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO, Presiding Officer.
Central Government Industrial Tribunal (No. 2),
Dhanbad
[No. 2/55/67-LRII.]

New Delhi, the 23rd May 1969

S.O. 2094.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Jamadoba Colliery of Messrs Tata Iron and Steel Company, Jamadoba, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 15th May, 1969.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD
REFERENCE No. 50 OF 1968

PRESENT:

Shri Sachidanand Sinha, M.A.M.L.—*Presiding Officer.*

PARTIES:

Employers in relation to the Jamadoba colliery of Messrs Tata Iron and Steel Company, Jamadoba

Vs.

Their workmen.

APPEARANCES:

For employers—Shri L. H. Parvatirya, L.A.

For workmen—Shri H. N. Singh, President, Koyala Mazdoor Panchayat.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, dated the 6th May, 1969

AWARD

1. The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Jamadoba colliery of Messrs Tata Iron and Steel Company, P.O. Jealgora, District Dhanbad and their workmen, by its order No. 2(132)/66-LRII, dated the 5th of October, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the Schedule annexed thereto. The Schedule is extracted below:—

SCHEDULE

“Whether the action of the management of Jamadoba colliery of Messrs Tata Iron and Steel Company limited in terminating the lien of Shri Madhu Gope, on the post of Trammer and placing his name in the 'Badli' list, with effect from the 23rd May, 1966 was justified?

If not to what relief is the workmen entitled?”

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 143 of 1966 on its file. While it was pending there the dispute was transferred by the Central Government by its order No. 8/25/67-LRII dated the 8th of May, 1967 to the Central Government Industrial Tribunal No. 2, Dhanbad and there it was registered as reference No. 179 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII dated the 13th of August, 1968 transferred the dispute to this tribunal and here it has been renumbered as reference No. 50 of 1968.

3. The employers filed the written statement on 24th April 1967. Their case is that Sri Madhu Gope was employed as a Trammer at Jamadoba colliery. He was granted leave for 21 days with effect from 11th April 1966 on the ground of the marriage of his son. A medical certificate dated 30th April 1966 was received by the employers on 5th May 1966 wherein it was mentioned that a period of absence from duty of one month with effect from 1st May 1966 is absolutely necessary for restoration of his health. The above medical certificate was neither accompanied by any application for the extension of leave by the workman nor supported by the certificate of the Gram Panchayat. Therefore, the manager, Jamadoba colliery informed Sri Madhu Gope by letter dated 9th/11th May 1966 that no extension of the leave was granted to him and that he was being marked absent and if he failed to report for duties within 3 days of the receipt of the letter necessary action would be taken against him as per company's Standing Order. No reply was received from Sri Madhu Gope before 25th May, 1966 nor did he join his duties as instructed although the above letter was received by him on 13th May 1966. According to the management the medical certificate was a doubtful one as it was not issued by any qualified allopathic Doctor. Shri Madhu Gope did not return within 8 days after the expiry of the leave originally granted to him nor offered explanation to the satisfaction of the Manager of his inability to return before the expiry of leave, the concerned workman automatically lost lien on his appointment as per condition of his service. Shri Madhu Gope was informed accordingly by letter dated 21st/23rd May 1966. After the issue of the above letter an application dated nil was received from the concerned workman on 25th May 1966 along with a copy of the medical certificate.

4. Another medical certificate dated 31st May 1966 unaccompanied by any application from Sri Madhu Gope was received on 3rd June 1966 recommending that a period of absence from duty of 13 days from 21st May, 1966 to 12th June 1966 was absolutely necessary for the restoration of his health. The management thereupon replied to the concerned workman by letter dated 7th/9th June 1966 that his name had already been removed from the Company's permanent Rolls.

5. Shri Madhu Gope finally came to the colliery on 16th June 1966. The case of the management is that they were justified in terminating the lien of Shri Madhu Gope on the post of Trammer and placing him in the Badli list and that he is not entitled to any relief.

6. The Vice President, Koyala Mazdoor Panchayat filed the written statement on behalf of the workmen on 29th October 1966. The case of the Union is that the concerned workman Sri Madhu Gope was granted 21 days commencing from 11th April 1966. Sri Madhu Gope fell ill at his village home in the District of

Azamgarh in Uttar Pradesh. On 30th April 1966 he sent an application with a medical certificate praying for extension of his leave by one month more and that the said application with a medical certificate was received by the management on 5th May 1966. The management replied to the concerned workman by its letter dated 9th/11th May 1966 that his leave could not be granted because his application has not been supported by a certificate from the Mukhia of the Gram Panchayat. On receipt of the letter of the management the concerned workman Sri Madhu Gope sent a certificate from the Mukhiya of the Gram Panchayat and another application on 21st May 1966 by registered post. The management on the other hand by its letter dated 21st/23rd May 1966 informed the concerned workman that his name has been removed from the permanent roll and he has been put on the Badli list.

7. Shri Madhu Gope sent to the management another application by registered post on 31st May 1966 supported by the certificate of Mukhia of the Gram Panchayat and the medical certificate praying further extension of his leave. He came back to join his duty on 15th June 1966 but he was not allowed to join his job. According to the union the lien of Shri Madhu Gope has been terminated illegally, unjustifiedly and arbitrarily.

8. The management examined on witness Sri Tarkeshwer Prasad, MW-1 and 15 items of documents were exhibited on behalf of the management and they are marked as Exts. M-1 to M-15. The workman on the other hand examined one witness viz. Sri Madhu Gope, the concerned workman and 9 items of documents were exhibited on behalf of the workman and marked as Exts. W-1 to W-9.

9. The point for consideration is whether the management was justified in terminating the lien of the concerned workman on the post of trammer and placing him in Badli list with effect from 23rd May, 1966?

10. Ext. M-1 is the application of leave showing that Sri Madhu Gope, the concerned workman was allowed 21 days leave commencing from 11th April, 1966 to 1st May, 1966. The concerned workman Sri Madhu Gope sent medical certificate (Ext. M-2). This medical certificate is granted by Dr. Lakshmi Kant Pandey, registered medical practitioner No. 4260 of Azamgarh. It is dated 30th April, 1966. It was received by the management on 5th May 1966. On receipt of the medical certificate Ext. M-2 the management sent a letter dated 9/11th May 1966 to the concerned workman informing him that the medical certificate did not accompany any application in respect to his prayer for extension of leave and it also did not contain any certificate from Gram Panchayat. Accordingly the management informed the concerned workman that it is not possible for them to accept his request for extension of leave. The medical certificate was obtained by the concerned workman on 30th April 1966 and was sent to the management. The point to be noted is that the medical certificate was sent by the concerned workman during the period of his authorised leave. According to the medical certificate the concerned workman was suffering from Measles on his whole body and that it was infectious disease. The management has not stated in the letter Ext. M-3 that the medical certificate was a spurious document. One of the ground for rejection was that the concerned workman did not send application along with medical certificate. But the application for extension of leave implied in the medical certificate itself. The other ground for rejection was that the concerned workman had not sent the certificate from Gram Panchayat along with medical certificate. The stand of the union is that the workman never knew that he had to furnish a certificate from the Gram Panchayat as well along with the medical certificate, because it is not a requirement mentioned in the Standing Order. But when he was informed by the management that a certificate from Gram Panchayat is essential he procured the same and sent the certificate of the Gram Panchayat (Ext. M-9) to the management. He also sent a formal application along with the certificate of the Gram Panchayat and the same was received by the management on 25th May, 1966. Though a certificate from the Mukhia of the Gram Panchayat is not a pre-requisite material according to the Standing Order but since the management required such certificate, the concerned workman sent the same and it was received by the management on 25th May, 1966.

11. Reasonable time must be allowed to the concerned workman to procure the necessary certificate from the Gram Panchayat. In the present case the concerned workman was informed by letter dated 9/11th May, 1966 (Ext. M-3) that such certificate is necessary and the workman complied with this requirement and sent the same to the management which has been received by the management as stated above on 25th May, 1966 which is a reasonable time. But prior to the receipt of the letter the service was terminated by letter dated 21st/23rd May, 1966. It

was submitted before me that the concerned workman Madhu Gope took all reasonable steps to inform the management about his illness supported by the medical certificate (Ext. M-2) and certificate from the Mukhiya of the Gram Panchayat (Ext. M-9) as desired by the management. The workman did whatever was required by the management for extension of his leave. It was not possible for him to do any thing else. The management did not inform the concerned workman that they did not rely on the medical certificate as it was a spurious document. The management also did not state to the concerned workman that they did not rely on the certificate of the Mukhiya Gram Panchayat as it was a spurious document.

12. The stand of the management is that the concerned workman did not return within 8 days of expiry of his leave and did not give a satisfactory explanation as to his inability to return in time, his lien on his appointment had come to an end automatically.

13. In this case the management had relied upon clause 9 of the Standing Order which runs as follows:—

“Any direct employee of the company other than a miner or loader who desires to obtain leave of absence shall apply in writing to the Head of his Department or the Manager of the colliery. Employees who due to illiteracy do not apply in writing must apply verbally. If the employee remains absent beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless:

- (i) he returns within the 8 days of the expiry of the leave except those who have enjoyed the privilege of 30 days so far, and
- (ii) gives an explanation to the satisfaction of the manager of his inability to return before the expiry of leave. In case the employee loses his lien on the appointment he shall be entitled to be kept on the ‘Badli’ list”.

14. According to the management it is a case of automatic termination for overstaying leave without satisfactory explanation. The stand of the management is that this tribunal has no power to sit in appeal on the merits upon the management's decision in not accepting the examination offered by the concerned workman. According to the management the Standing Order requires the satisfaction of the management and so the tribunal cannot at all look into explanation offered, at least for the purpose of examining its merits and substitute its own opinion for the opinion of the management.

15. The power of the management to direct its internal administration, which includes the enforcement of discipline of the personnel, cannot be denied; but with the emergence of modern concepts of social justice, it is now recognised that an employee should be protected against vindictive or capricious action on the part of the management which may affect the security of his service. In other words the industry should be efficiently managed and industrial peace should be maintained but at the same time an industrial worker must be placed in such a position that the security of his service may not depend upon the caprice or arbitrary will of the employer. The termination of service in colourable exercise of the power or as a result of victimisation or unfair labour practice or of caprice, should be prevented, as otherwise some of the fundamental rights and principles mentioned above would be violated. Arbitrary conduct or unnecessary harshness on the part of the employer, judged by the normal standard of a reasonable man, may be cogent evidence of victimisation or unfair labour practice.

16. I therefore come to the conclusion that this tribunal is at liberty to examine the explanation offered by the concerned workman for his absence and other circumstances also for the purpose to see whether the management acted with an honest purpose. In such cases the requirement bona fide is essential. Therefore, the important point for consideration is whether there was want of bona fides on the part of the manager or his act was arbitrary judged according to the standard of a reasonable man.

17. As already stated above the action of the management in not accepting the medical certificate or the certificate of the Gram Panchayat was arbitrary, because the management did not characterise the certificates granted by the medical practitioner and Mukhiya as spurious but still they did not take into consideration those two certificates for condoning his absence though they were filed before the management within a reasonable time.

18. I therefore, hold that the action of the management in terminating the lien to Sri Madhu Gope, on the post of trammer and placing his name in Badli list with effect from the 23rd of May was not justified. Therefore, Shri Madhu Gope, the concerned workman shall be paid leave wages and allowances admissible to him between 11th April, 1966 to 15th June 1966 for the period before he reported himself for duty on 16th June 1966 and he is entitled to be re-instated with full back wages from 16th June 1966 upto the date of his re-instatement along with continuity of his service.

19. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

SACHIDANAND SINHA, Presiding Officer.
[No. 2/132/66-LRII.]

New Delhi, the 28th May 1969

S.O. 2095.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Dhansar Colliery, Post Office Dhansar, District Dhanbad, and their workmen, which was received by the Central Government on the 16th May, 1969.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 3 OF 1969

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES

Employers in relation to the Dhansar Colliery Post office Dhansar, District Dhanbad

AND

Their workmen.

APPEARANCES:

On behalf of the employers.—Shri S. S. Mukherjee, Executive Committee Member, Indian Colliery Owners' Association.

On behalf of the workmen.—Shri Prasanta Burman, Secretary, Khan Mazdoor Congress

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 14th May, 1969/24th Vaisakha, 1891 Saka.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Dhansar Colliery, Post Office Dhansar, District Dhanbad and their workmen by its order No. 2/144/65-LRII dated 3rd March, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication of the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:—

SCHEDULE

“Whether the action of the management of the Dhansar Colliery in transferring the services of the following sixteen miners from No. 4 Incline to No. 2 Pit with effect from the 7th June 1965 was with a view to victimise the workmen, and if so, to what relief are the workmen entitled?”

1. Shri Shankar Singh.
2. Shri Sitan Bhulan.
3. Shri Malloo Bhuan.

4. Shri Ram Sahay Bhuiyan.
5. Shri Doman Bhuiyan.
6. Shri Balo Bhuiyan.
7. Shri Sukar Bhuiyan.
8. Shri Moti Bhuiyan.
9. Shri Paran Bhuiyan.
10. Shri Mohan Bhuiyan.
11. Shri Rupan Bhuiyan.
12. Shri Ganauri Bhuiyan.
13. Shri Butoo Chamar.
14. Shri Abdul Mian.
15. Shri Gafur Mian.
16. Shri Lakhan Bhuiyan."

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as No. 42 of 1966 on its file. Employers as well as workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal by the Central Government by its order No. 8/25/67-LRII, dated 8th May, 1967. Consequently, the reference was renumbered on the file of this Tribunal as Reference No. 119 of 1967. Again while it was pending before this Tribunal, the proceeding was transferred to the Central Government Industrial Tribunal (No. 3) by the Central Government by its Order No. 8/71/68-LRII, dated 13th August, 1968. Subsequently, the reference was transferred back to this Tribunal, by the Central Government by its order No. 2/144/65-LRII, dated 18th January 1969. Hence, the reference is renumbered on the file of this Tribunal as Reference No. 3 of 1969. Another Reference No. 118 of 1967 in respect of the same employers and workmen represented respectively also by Shri S. S. Mukherjee, Executive Committee Member of Indian Colliery Owners Association and Shri Prasanta Burman, Secretary, Khan Mazdoor Congress was pending on the file of this Tribunal. As in both the references the dispute was of similar, at the request of parties on 6th August 1968 as per order passed in Reference No. 118 of 1967 both the references were taken up together and evidence was recorded in Reference No. 118 of 1967 to be read as evidence in this reference also. By consent of the workmen, Exts. M 1(a) to M 1(c) for the employers and on admission by the employers Ext. W 1 for the workmen were marked. On behalf of the workmen 3 witnesses were examined and Exts. W 2 to W 9 were marked. The employers examined a witness and marked Exts. M 2 to M 6.

3. It is not in dispute that all the 16 workmen referred to in the Reference (hereinafter referred to as the affected workmen) were pick miners and they were transferred from No. 4 Incline to No. 2 Pit in Dhansar Colliery by the employers with effect from 7th June, 1965. The case of the workmen is that as newly recruited persons were unable to work in Pit No. 2 owing to difficult working conditions there, the employers conspired with the leader of their pocket union and transferred 54 miners, inclusive of the 16 affected workmen who were not members of the pocket union, from No. 4 Incline to No. 2 Pit and that as such the transfer was with a view to victimise the affected workmen for not being members of the pocket union of the employers and for being conscious of their rights and union minded. The employers filed their statement denying knowledge on their part if the affected workmen or any of them was a member of the Khan Mazdoor Congress. They denied that the transfer of the affected workmen from No. 4 Incline to No. 2 Pit was with a view to victimise them. They pointed out that the working faces in No. 4 Incline underground were reduced considerably and that the management had no other alternative but to transfer some of the miners from No. 4 Incline to No. 2 Pit. It is further stated that before the transfer of the workmen, the matter was discussed with the Colliery Mazdoor Sangh, the recognised union and an agreement dated 1st June 1965 was entered into between this union and the management for the transfer of the miners from No. 4 Incline to No. 2 Pit and that the transfer was without affecting the wages and other conditions of service of the workmen in any manner.

4. The affected workmen being pick miners in the Dhansar Colliery of the employers and their having been transferred from No. 4 Incline to No. 2 Pit being admitted facts, the only point calling for consideration is whether the transfer was with a view to victimise the affected workmen. In terms of the reference the onus was lying on the workmen to prove by clinching evidence that the transfer of the affected workmen was with a view to victimise them. WW 2 is the affected workman, his name being at Sl. No. 2 in the schedule. His evidence is that he and other affected workmen were transferred from No. 4 Incline to No. 2 Pit because they had become members of the Khan Mazdoor Congress Union and that

previously they were members of the union of Shri Chaturanand Jha. WW 1 has clarified that the union represented by Shri Chaturanand Jha was the Colliery Mazdoor Sangh. Therefore, the allegation is that the affected workmen, who were members of the Colliery Mazdoor Sangh become members of the Khan Mazdoor Congress and as such, the employers have victimised them by transferring them from No. 4 Incline to No. 2 Pit and that the pocket union of the employers referred to in their statement was the Colliery Mazdoor Sangh. The employers had denied knowledge that the affected workmen or any one of them had become members of the Khan Mazdoor Congress and also denied that on account of that they were transferred from No. 4 Incline to No. 2 Pit. WW 2 has admitted that he did not remember the date, month or the year when he became a member of the Khan Mazdoor Congress. He says that he had submitted a written letter to the Manager informing him of his (WW 2) becoming a member of the Khan Mazdoor Congress and that the letter was drafted under his instructions by Shri Chotu Bhulian, also a pick miner. Neither a copy of the said letter is produced nor is Shri Chotu Bhulan examined. The witness says that a copy of the letter may be at his house. WW 3 is Shri Prasanta Burman the Secretary of the Khan Mazdoor Congress. His evidence does not support the case of the workmen that the affected workmen had become members of the Khan Mazdoor Congress shortly before their transfer. It is in the evidence of WW 1 and WW 2 that apart from the 33 miners involved in References Nos. 118 and 119 of 1967, 21 miners who were transferred to Pit No. 2 were members of the Colliery Mazdoor Sangh. The case of the 17 workmen involved in Reference No. 118 of 1967 was that they became members of Congress Mazdoor Sangh and as such, the employers transferred them from No. 4 Incline to No. 2 Pit. From this evidence it follows that not only miners who were members of the Congress Mazdoor Sangh, but the members of the Khan Mazdoor Congress and the Colliery Mazdoor Sangh, which is said to be the pocket union of the employers, were also transferred from No. 4 Incline to No. 2 Pit along with the affected workmen. This evidence itself disapproves the allegation made in the statement of the workmen that the employers transferred only the members of the Khan Mazdoor Congress. On this evidence I do not find any substance that the transfer of the affected workmen was with a view to victimise them for their becoming members of the Khan Mazdoor Congress.

5. I, therefore, hold that the action of the management of the Dhansar Colliery in transferring the services of the 16 affected workmen named in the reference from No. 4 Incline to No. 2 Pit with effect from 7th June, 1963 was not to victimise the workmen, and as such, none of them is entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947

(Sd.) N. VENKATA RAO,
Presiding Officer
[No. 2/144/65-LRII]

ORDERS

New Delhi, the 26th May 1969

S.O. 2096.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Lower Kenda Colliery of Messrs Khas Kenda Colliery Private Limited, Post Office Kajoragram, District Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under section 7A of the said Act

SCHEDULE

Whether the management of Lower Kenda Colliery of Messrs the Khas Kenda Colliery Private Limited, was justified in dismissing Shri Aklu Mahato, Pick Miner with effect from the 25th April, 1968? If not, to what relief he is entitled?

[No. 6/133/68-LRII.]

S.O. 2097.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Kharkharee Colliery of Messrs Bharat Mining Corporation Limited, Post Office Kharkharee, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal (No. 3), Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Kharkharee Colliery of Messrs Bharat Mining Corporation Limited, Post Office Kharkharee, District Dhanbad in terminating the services of Shri Rabi Lochan Ghosh Electrician, with effect from the 1st October, 1968 was justified? If not, to what relief is the workman concerned entitled?

[No. 2/54/69 LRII.]

P. C. MISRA. Under Secy.

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

New Delhi, the 7th April 1969

S.O. 2098.—Whereas the Central Government is of the opinion that it is necessary to acquire the Evacuee Properties specified in the schedule hereto annexed in the States of Delhi, Madhya Pradesh, Bihar and Orissa for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons including payment of compensation to such persons,

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) it is notified that the Central Government has decided to acquire and hereby acquires the evacuee properties specified in the schedule hereto annexed.

A-SCHEDULE

All properties in the States of Delhi, Madhya Pradesh, Bihar and Orissa, which have been allotted to the share of the Custodian in Partition or have been vested in the Custodian under section 11 of the Evacuee Interests (Separation) Act, 1951, as a result of adjudication by the Competent Officer under the provisions of the said Act upto 31st December, 1968 and in respect of which no appeals have been filed, and if filed, have been rejected by the Appellate Officer.

[No. 22(14),Comp.&Prop/61.]

New Delhi, the 19th May 1969

S.O. 2099.—In exercise of the powers conferred by Sub-Section (i) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (No. 44 of 1954), the Central Government hereby appoints for the Union Territory of Himachal Pradesh, Shri P. C. Sotl, Assistant Settlement Officer in the office of the Regional Settlement Commissioner, Jullundur, as Managing Officer for the purposes of performing the functions assigned to such officers by or under the said Act with immediate effect.

[No. 8/235/ARG/62.]

S.O. 2100.—In exercise of the powers conferred by Sub-Section (i) of Section 6 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) the Central Government hereby appoints Shri Pritam Singh, Assistant Settlement Officer in the office of the Regional Settlement Commissioner, Jullundur as Assistant Custodian for the States of Punjab and Haryana and the Union Territory of Himachal Pradesh for the purpose of discharging the duties imposed on such officers by or under the said Act, with immediate effect.

[No. 8/253/ARG/62.]

A. G. VASWANI,
Settlement Commissioner (A) & Ex-Officio Under Secy.

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

ORDER

New Delhi, the 15th May 1969

S.O. 2101.—In pursuance of Rule 11-D(D)(A) of the Evacuee Interest (Separation) Rules, 1951, the Central Government hereby makes the following order to amend the order published with the notification of the Government of India in the late Ministry of Works, Housing and Rehabilitation, (Department of Rehabilitation) No. S.O. 531, dated 6th February, 1964, namely:—

In the said order,

For the words and figures "31st March, 1969," the words and figures "30th September, 1969" shall be substituted.

[No. F. 5(24)/59/Prop.II/Comp. & Prop.]

GULAB L. AJWANI,
Settlement Commissioner (Compensation).

**MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT
AND COOPERATION**

(Department of Food)

CORRIGENDUM

New Delhi, the 22nd May 1969

S.O. 2102.—In the notification of the Government of India in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. S.O. 478, dated the 30th January, 1969, published in the Gazette of India, Part II Section 3, Sub-section (ii), dated the 8th February, 1969, at page 503, line 7 omit 'Second'.

[No. F. 26-7/67-SG.II.]

DEVAKI NANDAN GOYAL, Under Secy.

DEPARTMENT OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 23rd May 1969

S.O. 2103—In exercise of the powers conferred by section 74 read with section 43 of the Indian Post Office Act, 1898 (6 of 1898), the Central Government hereby makes the following rules further to amend the Indian Post Office Rules, namely:—

1. These rules may be called the Indian Post Office (Seventh Amendment) Rules, 1969.

2. In rule 126 of the Indian Post Office Rules, 1933, before the explanation, the following proviso shall be added, namely:

“Provided that the amount of a money order other than a V.P. money order shall be repaid to the remitter in case the payee is dead.

Provided further that where the remitter or, in case of a V.P. money order the payee, is dead the amount of the money order or money orders upto one hundred rupees shall be paid to the claimant on his executing a personal indemnity, bond and for amounts exceeding one hundred rupees an indemnity bond with one surety shall be obtained from the claimant.

[No. 41/3/68-Cl.]

M. K. DEENA DAYALAN,
Director (Postal Technical).

MINISTRY OF HEALTH, FAMILY PLANNING, W. H. AND U. D.

(Department of Health)

New Delhi, the 14th May 1969

S.O. 2104—In exercise of the powers conferred by sub-section (1) of section 14 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consultation with the Medical Council of India, hereby directs that the medical qualification, ARTSEXAMEN granted by the University of Utrecht, Netherlands, shall be a recognised medical qualification for the purposes of that Act.

[No. F. 19-52/68-MPT.]

B. S. SINGH, Dy. Secy.

(Department of Health)

New Delhi, the 16th May 1969

S.O. 2105—In exercise of the powers conferred by sub-section (5) of section 13 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following amendment in Part I of the Third Schedule to the said Act, namely:—

In the said Part I of the Third Schedule, after the entry relating to the “East Punjab State Medical Faculty, L.S.M.F. (East Punjab)” the following entry shall be inserted, namely:—

“Government of Orissa

Diploma in Modern Medicine D.M.S.M.(Orissa)”
and Surgery

[No. F. 18-12/68-MPT.]

S.O. 2106—Whereas in pursuance of the provisions of clause (b) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), the following persons have been elected by the University specified against each of them

to be members of the Medical Council of India with effect from the date of election noted against each, namely:—

Name of Member	University	Date of election
1. Dr. Pritam Das, M.S., F.R.C.S., University of Allahabad F.A.C.S. Principal, Motilal Nehru Medical College, Allahabad .		21.4.1969.
2. Prof. Sukumar Das, Principal, Berhampur University Medical College, Berhampur.		18-3-1969.

Now, therefore, in pursuance of the provisions of sub-section (1) of section 3 of the said Act, the Central Government hereby directs that Dr. Pritam Das, Principal, Motilal Nehru Medical College, Allahabad, shall continue to be a member of the Medical Council of India and makes the following further amendment in the notification of the Government of India in the late Ministry of Health No. F. 5-13/59-MI, dated the 8th January, 1960, namely:—

In the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3", after serial No. 38 and the entry relating thereto, the following serial number and entry shall be inserted, namely:—

39. Professor Sukumar Das, Principal, Medical College, Berhampur.

[No. F. 4-29/68-MPT(D).]

S.O. 2107.—In pursuance of clause (d) of rule 2 of the Indian Medical Council Rules, 1957, the Central Government hereby appoints Dr. S. C. P. Sinha, Registrar, Bihar Council of Medical Registration and Deputy Director of Health Services, Bihar, as Returning Officer for the conduct of election of a member to the Medical Council of India under clause (c) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) in the State of Bihar.

[No. F. 4-29/68-MPT(E).]

ORDER

New Delhi, the 16th May 1969

S.O. 2108.—Whereas by the notification of the Government of India in the late Ministry of Health and Family Planning No. 18-13/66-MPT dated the 3rd June, 1966 the Central Government has directed that the Medical qualification Doctor of Medicine granted by the Women's Medical College of Pennsylvania, Philadelphia, Pennsylvania, U.S.A. shall be recognised medical qualification for the purposes of the Indian Medical Council Act, 1956 (102 of 1956);

And whereas Dr. Sister Mary Liqueri Cantlin, who possesses the said qualification is for the time being attached to the Mercy Hospital, Jamshedpur for the purposes of teaching, research or charitable work;

Now, therefore, in pursuance of clause (c) of the proviso to sub-section (1) of section 14 of the said Act, the Central Government hereby specifies—

(i) a further period of two years with effect from the 8th December, 1968,
or

(ii) the period during which Dr. Sister Mary Liqueri Cantlin is attached to
the said Mercy Hospital, Jamshedpur,

whichever is shorter, as the period to which the medical practice by the aforesaid doctor shall be limited.

[No. F. 19-11/69-MPT.]

K. DEO, Under Secy.

(Department of Health)

New Delhi, the 21st May 1969

S.O. 2109.—The following draft of certain rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st August, 1969.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1969.

2. In the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the said rules) for the existing rules 113 to 118 the following shall be substituted, namely:—

“113. *Tests for sterility*—The tests for sterility shall be as prescribed in the following Rules.

114. The tests laid down in the edition of the Indian Pharmacopoeia for the time being in force for the presence of living aerobic or anaerobic bacteria and fungi and such other tests prescribed in Schedule E, if any, shall be carried out by the manufacturer in respect of the following items:—

- (a) sera and solutions of serum proteins intended for injection;
- (b) bacterial vaccines to which Part I(A) of Schedule F applies;
- (c) other vaccines intended for parenteral administration;
- (d) vaccines, antigens and mixtures of toxins or antigens with serum intended to be used for immunising, treatment or for diagnosis by inoculation of the patient;
- (e) solutions and suspensions of insulin;
- (f) dry preparations of drugs intended for parenteral use;
- (g) preparations of the posterior lobe of the pituitary body intended for use of injection;
- (h) preparations from cultures of pathogenic organisms in a form to be administered orally, which are required to be sterile;
- (i) ophthalmic solutions;
- (j) sterilised surgical catguts and sutures; and
- (k) any other preparations in a form to be administered parenterally or required to be supplied in a sterile condition.

Provided that—

- (i) in case of preparations intended for parenteral use or which are required to be supplied in a sterile condition where the tests prescribed in the edition of the Indian Pharmacopoeia for the time being in force cannot be applied as such, the tests applied may be with such modifications as the Licensing Authority may consider necessary, and
- (ii) If a manufacturer satisfies the Licensing Authority that he has already in use tests for the presence of living aerobic and anaerobic bacteria or fungi in any of the above named substances and that these tests as applied by him will detect the presence of such micro-organisms in the substance as ready for issue with a certainty at least equal to that afforded by the application of the test prescribed by the part, the Licensing Authority may approve the use of such tests in the place of the prescribed tests, but in such a case the authority may at any time withdraw such approval and require the manufacturer to carry out the prescribed tests.

115. *Application of tests for sterility*

The tests as prescribed in the edition of the Indian Pharmacopoeia for the time being in force shall be applied:—

- (a) to samples taken from the final bulk material of each batch of the product before filling in final containers except preparations which

after being sealed in the containers are to be sterilized by heat in a manner satisfactory to the Licensing Authority; and

(b) to samples of finished containers taken at random from each batch after filling and sealing but in such a manner that their selection is spread throughout the filling period. In case of preparations sterilised by heat, samples should be drawn from each steriliser load and should be representative of all layers of the load.

116. The samples required to be taken under the last preceding rule shall be taken in the following proportion:—

(a) *For bulk material*:—

(i) Where the bulk material in solid form belonging to one batch is distributed in a number of containers the total number of containers taken for test shall be $0.4 N$ where 'N' is the total number of containers in a batch subject to a minimum of three containers. Provided that in case of sera, vaccines, antigens and mixtures of toxins or antigens and similar related products, each bulk container shall be tested for sterility; and

(ii) the quantity taken for test from the container shall be not less than 0.1 percent of the total volume if the volume is 10 litres or more but shall in no case be less than the quantity prescribed for carrying out the sterility test in the edition of the Indian Pharmacopoeia for the time being in force.

In the case of solid substances, the quantity taken shall be as prescribed in the edition of the Indian Pharmacopoeia for the time being in force.

(b) *For Final containers*.—The number of containers taken for test from every batch shall be not less than 2 per cent of the total number of final containers in the batch or 20 containers, whichever is less, taken at random from the batch and if so required by the Licensing Authority an additional two containers from each thousand or part of a thousand after the first. The number of containers in no case shall be less than two from any batch.

117. 1. Sterility tests shall be conducted by personnel having had expert training in microbiology and experience in rigid aseptic techniques which in the opinion of the Licensing Authority is adequate.

2. The tests shall be carried out in a place suitably designed for the purpose and environmental control tests including plate counts shall be performed at regular intervals.

3. Sterility tests shall not be conducted under direct exposure to ultra violet light or in areas under aerosol treatment.

4. Each batch of the media used shall be tested for its sterility and growth promoting qualities.

118. Detailed records of sterility tests shall be maintained which would include the following particulars:—

(a) Serial Number.

(b) Names of the Media used.

(c) Name of the product, its Batch Number and Batch size

(d) Whether bulk or final container.

(e) Number of samples used for sterility test.

(f) Name of antiseptic and its concentration.

(g) The volume of the inoculum.

(h) The volume of the culture medium.

(i) The date of inoculation.

(j) The observation of each inoculated tube during and at the end of the inoculation period.

(k) The observation of the positive and negative control.

3. The existing Rule 119 of the said rules, shall be deleted.

4. In Schedule F of the said rules under 'Part X—Surgical Ligature and Surgical Suture', for the words—

"The sterility tests shall be carried out either (1) by the method in place of the tests so prescribed" occurring after sub-para (d) of para 4, the following para shall be substituted, namely:—

"The tests for sterility as prescribed under the rules shall be performed with the modification that the surgical ligature (suture) which claims to be sterile shall be incubated for a period of fourteen days for each test."

[No. F. 1-8/69-D.]

S.O. 2110.—The following draft of certain rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st August, 1969.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1969.
2. In the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the said rules) after rule 65, the following new rule 65-A shall be inserted, namely:—

"65-A. Additional information to be furnished by an applicant for licence or a licensee to the Licensing Authority:—

The applicant for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the licensing authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, and/or any other relevant matter which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee, while applying for or after obtaining the licence, as the case may be."

3. After rule 67-G of the said rules, the following new rule 67-H shall be inserted, namely:—

"67-H. Additional information to be furnished by an applicant for licence or a licensee to the Licensing Authority:—

The applicant for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the Licensing Authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, and/or any other relevant matter, which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee, while applying for or after obtaining the licence, as the case may be."

4. The existing rule 67-H of the said rules, shall be renumbered as 67-I.
5. After rule 84, of the said rules, the following new rules shall be inserted, namely:—

"84-A. Additional information to be furnished by an applicant for licence or a licensee to the Licensing Authority:—

The application for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the Licensing Authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, and/or any other relevant matter, which may be required

for the purpose or verifying the correctness of the statements made by the applicant or the licensee, while applying for or after obtaining the licence, as the case may be."

6. After rule 85-H of the said rules, the following new rule 85-I shall be inserted, namely:—

"85-I. Additional information to be furnished by an applicant for licence or a licensee to the Licensing Authority:—

The applicant for the grant of a licence or any other person granted a licence under this Part shall, on demand, furnish to the Licensing Authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, and/or any other relevant matter, which may be required for the purpose or verifying the correctness of the statements made by the applicant or the licensee, while applying for or after obtaining the licence, as the case may be."

7. The existing rule 85-I of the said rules shall be renumbered as 85J of the said rules, the following new rule 142A shall be inserted, namely:—

"142-A. Additional information to be furnished by an applicant for licence or a licensee to the Licensing Authority:—

The applicant for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the Licensing Authority, before the grant of the licence or during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, and/or any other relevant matter, which may be required for the purpose or verifying the correctness of the statements made by the applicant or the licensee, while applying for or after obtaining the licence, as the case may be."

[No. F. 1-15/68-D.]

S.O. 2111.—The following draft of certain rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1969.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1969.

2 In the Drugs and Cosmetics Rules, 1945,—

In Schedule F after Part XII-A the following new Parts shall be inserted, namely:—

PART XII-B—Test for patent or proprietary medicines containing antibiotics meant for parenteral use.

In case standard for any antibiotic for parenteral use are laid down in the current edition of the Indian Pharmacopoeia for the time being in force and this antibiotic is an ingredient in a patent or proprietary medicine for parenteral use, such a patent or proprietary medicine shall comply with the test for pyrogens, the test for undue toxicity and the test for histamine like substances wherever such tests have been prescribed in the current edition of the Indian Pharmacopoeia for the time being in force in respect of the antibiotics so present.

PART XII-C—Tests for disintegration to be complied with by patent or proprietary medicines in the form of tablets except vaginal tablets and tablets which are to be sucked or chewed.

Patent or proprietary medicines in the form of tablets except vaginal tablets and tablets which are to be sucked or chewed shall comply with the test for disintegration for tablets prescribed in the current edition of the Indian Pharmacopoeia for the time being in force."

[No. F.1-42/68-D.]

S.O. 2112.—The following draft of certain rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1969.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1969.

2. In the Drugs and Cosmetics Rules, 1945 in rule 96 in sub-rule (1), after clause (V) the following shall be inserted:—

“Explanation.—The following explanation gives the meaning of the term 'Batch' in relation to different categories of drugs:—

1. In case of drugs manufactured by a continuous process like manufacture of Magnesium sulphate, Pharmaceutical Chemicals etc., the production in one shift may be considered as one 'Batch'.

2. In case of powders, liquid orals, ointments, etc. one 'Batch Number' should be assigned to all the containers filled from one homogenous bulk.

3. In case of tablets, capsules, lozenges, troches, etc one 'Batch Number' should be assigned to the products manufactured from one homogenous mix.

4. In case of parenteral preparations sterilized by steam under pressure one 'Batch Number' should be assigned to all containers filled from the homogenous solution and sterilized in one sterilizer load.

5. In case of containers, filled from one homogenous solution and sterilized in more than one sterilizer load, a 'Batch Number' should be assigned to the homogenous bulk solution. The containers sterilized in each sterilizer load should be given the 'Batch Number' given to the homogenous solution suffixed by other distinctive Number, referring to the particular sterilizer load.

In performing the sterility tests, a sample should be drawn from each sterilizer load. (For the purposes of chemical and other tests, representative samples from all containers filled from the homogenous bulk solution should be taken).

6. In case of parenteral products filled aseptically a 'Batch Number' should be assigned to all containers filled from one homogenous mix during one filled operation, the filling operation being defined as the period not more than a day or a shift and during which no change in the filling assembly is made.

7. In case of homogenous mix, aseptically filled in a number of filling operations, a 'Batch Number' should be assigned to the homogenous mix and the container filled in individual filling operations should bear the Batch Number assigned to the homogenous bulk, suffixed with other distinctive Number referring to the particular filling operation.

8. In case of medicinal gases the production of a gas in one week from one tank load should be considered as a 'Batch' provided the tank was emptied every week.

In case, however, the manufacture is a continuous process in which the tank is not unloaded after a week, a day's production should be considered as constituting a 'Batch'.

[No. F.1-1/68-D.]

S.O. 2113.—The following draft of certain rules further to amend the Drugs and Cosmetics Rules, 1945 which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940) is published, as required by the sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1969.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1969.

2. In the Second Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) for the existing entry 5, the following shall be substituted, namely:—

5. Other drugs.

(a) Drugs included in the Indian Pharmacopoeia. Standards of identity, purity and strength specified in the edition of the Indian Pharmacopoeia for the time being in force and such other standards as may be prescribed.

In case the standards for identity, purity and strength for drugs are not specified in the edition of the Indian Pharmacopoeia immediately preceding, the standards for identity, purity and strength shall be those occurring in such immediately preceding edition of the Indian Pharmacopoeia and such other standards may be prescribed.

(b) Drugs not included in the Indian Pharmacopoeia but which are included in any official pharmacopoeia of any country. Standards of identity, purity and strength specified for the drugs in the edition of the such official pharmacopoeia for the time being in force and such other standards as may be prescribed.

In case the standards for identity, purity and strength for drugs are not specified in the edition of such official pharmacopoeia for the time being in force, but are specified in the edition immediately preceding, the standards for identity, purity and strength shall be those occurring in such immediately preceding edition of such official pharmacopoeia and such other standards as may be prescribed.

[No. F. 1-4/67-D.]

L. K. MURTHY, Under Secy.

(Dept. of W.H. and U.D.).

New Delhi, the 15th May 1969

S.O. 2114.—In exercise of the powers conferred by sub-rule (2) of rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Services (Classification Control and Appeal) Rules, 1965, the President hereby makes the following further amendments in the notifications of the Government of India in the Ministry of Health No. SRO 619 dated the 28th February, 1957 read with the Ministry of Health, Notification No. F. 16-96/62-LSG dated the 5th January, 1963, namely:—

In part I, II and III of the Schedule to the said notification for the word 'Director' wherever it occurs, the words 'Chief Planner' shall be substituted.

This notification shall be deemed to have come into force on the 6th day of December, 1966.

[No. 16019(3)/67-UD.]

B. M. LAL, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 16th May 1969

S.O. 2115.—In exercise of the powers conferred by Section 5(1) of the Cinematograph Act, 1952 and sub-rule (3) of rule 8 read with sub-rule 2 of rule 9 of the Cinematograph (Censorship) Rules, 1958, the Central Government hereby appoints Shri Gangadhar Gadgil, after consultation with the Central Board of Film Censors, as a member of the Advisory Panel of the said Board at Bombay with immediate effect.

[No. 11/2/68-F(C).]

H. B. KANSAL, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 16 मई 1969

एस० ओ० 2116.—चलचित्र अधिनियम, 1952 की धारा 5(1) और चलचित्र (सेन्सर) नियमावली, 1958 के नियम 9 के उपनियम 2 के साथ पठित नियम 8 के उपनियम (3) द्वारा दिए गए अधिकारों का प्रयोग करते हुए, केन्द्रीय सरकार ने के द्वीय फिल्म सेन्सर बोर्ड से परामर्श करके एतद्वारा श्री गंगाधर गाडगिल को अभी से उक्त बोर्ड के बम्बई सलाहकार मण्डल का सदस्य नियुक्त किया है।

[संख्या फाईल 11/2/68-एफ.सी.]

हरि बाबू कंसल, अवर सचिव।

New Delhi, the 22nd May 1969

S.O. 2117.—In exercise of the powers conferred by rule 10 of the Cinematograph (Censorship) Rules, 1958, the Central Government is pleased to appoint Shri P.N. Kamath Superintendent, to officiate as Secretary to the Chairman, Central Board of Film Censors, Bombay with effect from the after-noon of 3rd May, 1969 to 26th May 1969 fore-noon vice Shri R. S. Saigal proceeded on leave.

[No. 2/47/69-FC.]

ORDER

New Delhi, the 20th May 1969

S.O. 2118.—In pursuance of the directions issued under the provisions of the enactment specified in the First Schedule annexed hereto the Central Government after considering the recommendations of the Film Advisory Board, Bombay hereby approves the film specified in column 2 of the Second Schedule annexed hereto in all its language versions to be the description specified against it in column 6 of the said Second Schedule.

THE FIRST SCHEDULE

- (1) Sub-Section (4) of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
- (2) Sub-Section (3) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XI of 1953).

THE SECOND SCHEDULE

S. No.	Title of the Film	Length 35mm	Name of the Applicant	Name of the Producer	Whether a film or a film intended for educational purposes or a film dealing with news and current events or a documentary film
I	2	3	4	5	6
1	Rajhans Maza Nijola (Marathi)	608.00M	Director of Publicity Govt. of Maharashtra, Film Centre, 68, Tardeo Road, Bombay-34	Govt. of Maharashtra Documentary film (For release in Maharashtra Circuit only.)	

[No. I. 24/1/69-FP App. 1355.]

BANU RAM AGGRAWAL, Under Secy.

नई दिल्ली, 22 मई, 1969

का० आ० 2119 — चलचित्र (सेन्सर) नियामवाली, 1958 के नियम 10 के दाग दिये गये अधिकारों का प्रयोग करते हुए, केन्द्रीय सरकार ने अधीक्षक श्री पी० एन० कामथ को, 3 मई, 1969 के अपराह्न से 26 मई, 1969 के पूर्वाह्न तक, श्री आर० एम० सेहगल के स्थान पर जो छुट्टी पर गये हैं, अध्यक्ष, केन्द्रीय फिल्म सेन्सर बोर्ड, बम्बई का सचिव म्यानापन्न रूप से नियुक्त किया है।

[संख्या 2/47/69—एफ० (सी).]

आदश

नई दिल्ली, 20 मई 1969

का० आ० 2120 :— इसके साथ नयी प्रथम अनुसूची में निर्धारित प्रत्येक अधिनियम के उपाबन्ध के अन्तर्गत जारी किये गये निदेशों के अनुसार, केन्द्रीय सरकार फिल्म सलाहकार बोर्ड, बम्बई की सिफारिशों पर विचार करने के बाद, एतद्वारा इसके साथ लगी द्वितीय अनुसूची में कालम 2 में दी गई फिल्म को उसके सभी भाषाओं के रूपान्तर भाषित, जिसका विवरण उस के सामने उक्त द्वितीय अनुसूची के कालम 6 में दिया हुआ है स्वीकृत करती है :—

प्रथम अनुसूची

- (1) चलचित्र अधिनियम, 1952 (1952 का 37 वां केन्द्रीय अधिनियम) की धारा 12 की उपधारा (4) तथा धारा 16।
- (2) बम्बई भिनेमा (विनियम) अधिनियम, 1953 (1953 का 11 वां बम्बई अधिनियम) की धारा 5 की उपधारा (3) तथा धारा 9।

विर्त्ति अनुसूची

ऋग्म फिल्म का नाम लम्बाई 35 व्रावेदक का नाम निर्माता का नाम क्या वैज्ञानिक फिल्म
मंद्या मि० मी० है या शिक्षा सम्बन्धी
फिल्म है या गमाचार
और गामगिक पठ-
नाओं की फिल्म है
या डाक्यूमेन्ट्री फिल्म
है ।

(1)	(2)	(3)	(4)	(5)	(6)
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1 राजहंस मजा निजला (मराठी)	608.00 मीटर	प्रचार निदेशक, फिल्म सेन्टर, वम्बई-34	महाराष्ट्र सरकार, डाक्यूमेन्ट्री फिल्म (केवल 68-तारादेव रोड, महाराष्ट्र सकिट के लिये)
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[संख्या फ० 24/1/69-एफ० पी० परिणाम 1355]

यातू गम ग्रन्थालय, अवर सचिव ।

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi the 17th May 1969

S.O. 2121.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the constitution and of all other powers enabling him in this behalf and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Fundamental Rules, namely.—

1. (1) These rules may be called the Fundamental (Third Amendment) Rules, 1969

(2) They shall come into force on the date of their publication in the Official Gazette

2. In the Fundamental Rules, in rule 56—

(i) for clauses (j) and (k) the following clauses shall be substituted, namely:—

"(j) Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

(i) if he is in Class I or Class II service or past the age limit for the purpose of direct recruitment to which is below thirty-five years, after he has attained the age of fifty years

(ii) in any other case after he has attained the age of fifty five years.

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July, 1966 and to a Government servant referred to in clause (f).

(k) Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Class I or Class II service or post, the age limit for the purpose of direct recruitment to which is below thirty-five years; and in all other cases after he has attained the age of fifty five years;

Provided that:—

(a) nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July, 1966 or to a Government servant referred to in clause (f); and

(b) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause.”

(2) After clause (k), the following clauses shall be added, namely:—

“(l) Notwithstanding anything contained in clause (j) the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Government servant in Class III service or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

(m) A Government servant in Class III service or post who is not governed by any pension rules, may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has completed thirty years' service.”

(3) For Note 2, the following Note shall be substituted, namely:—

“Note 2: The three months' notice referred to in clauses (j), (k), (l) or (m) may be given before the Government servant attains the age specified in Clauses (j) and (k), or has completed 30 years of service specified in clauses (l) and (m), provided that the retirement takes place after he has attained the relevant age or has completed 30 years service, as the case may be.”

[No. 7(14)-EV/67-I.]

New Delhi, the 19th May 1969

S.O. 2122.—In exercise of the powers conferred by the proviso to article 309 of the Constitution and of all other powers enabling him in this behalf the President hereby makes the following regulations further to amend the Civil Service Regulations, namely:—

1. (1) These Regulations may be called the Civil Service (Fifth Amendment) Regulations 1969.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Civil Service Regulations, in article 459—

(1) for clauses (h) and (i) the following clauses shall be substituted, namely:—

“(h) Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) if he is in Class I or Class II service or post the age-limit for the purpose of direct recruitment to which is below thirty-five years, after he has attained the age of fifty years; and

(ii) in any other case after he has attained the age of fifty five years.

Provided that nothing in this clause shall apply to a Government servant referred to in clause (f) who entered service on or before 23rd July, 1966.

(1) Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has

attained the age of fifty years if he is in Class I or Class II service or post, the age limit for the purpose of direct recruitment to which is below thirty five years; and in all other cases after he has attained the age of fifty five years.

Provided that:

(a) nothing in this clause shall apply to a Government servant referred to in the clause (f) who entered Government service on or before 23rd July, 1966 and

(b) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

(2) After clause (1) the following clauses shall be added, namely:—

"(j) Notwithstanding anything contained in clause (h) the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Government servant in Class III service or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

(k) A Government servant in class III service or post, who is not governed by any pension rules may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has completed thirty years' service.".

(3) For Note 2, the following note shall be substituted, namely:—

"Note 2.—The three months' notice referred to in clauses (h), (i), (l) and (k) may be given before the Government servant attains the age specified in clauses (h) and (i) or has completed 30 years of service specified in clauses (j) and (k), provided that the retirement takes place after he has attained the relevant age or has completed 30 years service, as the case may be".

[No. 7(14)-EV/67-11.]

N. S. CHANDRAMOWLI, Under Secy.

दित्त मंत्रालय

(अर्थ क्रियान्वयन)

नई दिल्ली, 17 मई, 1969

एस० ओ० 2123.—भारतीय राज्य बैंक अधिनियम, 1955 (1955 के 23 अंश अधिनियम) की धारा 21-क की उप-धारा (1) के साथ पठित धारा 21 की उप-धारा (1) के खण्ड (ग) के अनुसार, केन्द्रीय सरकार ने, भारतीय रिजर्व बैंक की सलाह से, एतद्वारा मैसर्स श्रोल्ड हम एण्ड सन (इण्डिया) लिमिटेड, मद्रास के श्री ग्रार० बी० जेसुदासन को 4 मई, 1969 से भारतीय राज्य बैंक के मद्रास के स्थानीय बोर्ड के सदस्य के रूप में पुनर्नामांकित किया है।

[सं० एफ० 8/63/69-एस० बी०]

के० ऐगुरत्सम, प्रन० सचिव ।

(Department of Economic Affairs)

New Delhi, the 17th May 1969

S.O. 2124.—In pursuance of clause (c) of sub-section (1) of Section 21 read with sub-section (1) of section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India, hereby renominates Shri R. B. Jesudasen, M/s. Oldham & Son (India) Ltd., Madras as a Member of the Madras Local Board of the State Bank of India with effect from the 4th May 1969.

[No. F.8/63/69 SB.]

S.O. 2125.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-clause (i) of clause (c) of sub-section (1) of section 10 of the said Act shall not till the 30th April, 1970, apply to the undernoted banking companies, in so far as the said provisions prohibit their respective Chief Executive Officers, whose names have been mentioned below against the names of the banking companies, from being directors of the Industrial Credit and Investment Corporation of India Ltd., being a company registered under the Indian Companies Act, 1913 (VII of 1913).

Name of banking Company	Name & Designation of Chief Executive Officer
1. The Bank of America National Trust and Savings Association, Bombay.	Mr. J. O. Sims, Manager (Chief Executive Officer in India).
2. The Chartered Bank, Calcutta	Mr. A. A. Norrie, Chief Manager for India (Chief Executive Officer in India).

[No. 15(5)-BC/69.]

New Delhi, the 22nd May 1969

S.O. 2126.—Statement of the Affairs of the Reserve Bank of India, as on the 16th May, 1969

BANKING DEPARTMENT

LIABILITIES		ASSETS	
Capital Paid up	Rs. 5,00,00,000	Notes	Rs. 22,60,23,000
		Rupee Coin	3,90,000
Reserve Fund	Rs. 150,00,00,000	Small Coin	8,37,000
		Bills Purchased and Discounted :—	
National Agricultural Credit (Long Term Operations) Fund	Rs. 143,00,00,000	(a) Internal	
		(b) External	
		(c) Government Treasury Bills	Rs. 158,00,29,000
National Agricultural Credit (Stabilisation) Fund	Rs. 33,00,00,000	Balances Held Abroad*	Rs. 154,44,55,000
		Investments**	Rs. 135,17,19,000
National Industrial Credit (Long Term Operations) Fund	Rs. 55,00,00,000	Loans and Advances to :—	
		(i) Central Government	
		(ii) State Governments@	Rs. 103,54,71,000
Deposits :—		Loans and Advances to :—	
(a) Government		(i) Scheduled Commercial Banks†	Rs. 144,39,90,000
		(ii) State Co-operative Banks††	Rs. 197,30,23,000
		(iii) Others	Rs. 2,98,60,000
(i) Central Government	Rs. 54,88,27,000		

LIABILITIES	ASSETS	
	Rs.	Rs.
(ii) State Governments	10,73,52,000	Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund :—
(b) Banks :—		(a) Loans and Advances to :—
[(i) Scheduled Commercial Banks	158,54,42,000	(i) State Governments 31,48,39,000
(ii) Scheduled State Co-operative Banks	8,34,58,000	(ii) State Co-operative Banks 12,08,90,000
(iii) Non-Scheduled State Co-operative Banks	56,64,000	(iii) Central Land Mortgage Banks
(iv) Other Banks	25,43,000	(b) Investment in Central Land Mortgage Bank Debentures 8,66,95,000
(c) Others	245,30,84,000	Loans and Advances from National Agricultural Credit (Stabilisation) Fund :—
Bills Payable	28,22,91,000	Loans and Advances to State Co-operative Banks 5,15,21,000
Other Liabilities	133,66,73,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund :—
		(a) Loans and Advances to the Development Bank 6,26,71,000
		(b) Investment in bonds/debentures issued by the Development Bank ..
		Other Assets 44,29,93,000
	Rupees 1026,53,34,000	Rupees 1026,53,34,000

*Includes Cash, Fixed Deposits and Short-Term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 91,96,00,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 21st day of May, 1969.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 16th day of May, 1969

ISSUE DEPARTMENT

LIABILITIES		ASSETS	
Notes held in the Banking Department	Rs. 22,60,23,000	Rs.	Gold Coin and Bullion :—
Notes in circulation	3652,54,08,000		(a) Held in India 182,53,11,000 ..
TOTAL NOTED ISSUED	3675,14,31,000		(b) Held outside India
			Foreign Securities 216,42,00,000 ..
			TOTAL 398,95,11,000
TOTAL LIABILITIES	3675,14,31,000		Rupee Coin 64,03,72,000
			Government of India Rupee Securities 3212,15,48,000
			Internal Bills of Exchange and other Commercial paper
			TOTAL ASSETS 3675,14,31,000

Dated the 21st day of May, 1969.

L. K. JHA,
Governor.

[No. F. 3(3)-BC/69.]

K. YESURATNAM, Under Secy.

CORRIGENDUM

"In the Statement of the Reserve Bank of India, Banking Department, as on 28th March 1969 published in the Gazette of India dated 12th April 1969 at part II-Section 3(ii) on page 1296, the date appearing as the 28th day of April 1969 in the heading should be read as the 28th day of March, 1969".

(Department of Revenue and Insurance)

INCOME-TAX

New Delhi, the 22nd May 1969

S.O. 2127.—In pursuance of sub-clause (f) of clause (iii) of sub-section 3 of Section 194-A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Hindustan Machine Tools Ltd., P.O. HMT., Bangalore-31, for the purposes of the said sub-clause.

[No. 51/No. F. 12/164/68-ITCC.]

S.O. 2128.—In pursuance of sub-clause (f) of clause (iii) of sub-section 3 of Section 194-A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the National Textile Corporation Ltd., Room No. 283, Udyog Bhavan, New Delhi-11, for the purposes of the said sub-clause.

[No. 52/No. F. 12/65/69-ITCC.]

R. D. SAXENA, Dy. Secy.

(Department of Revenue and Insurance)

New Delhi, the 26th May 1969

S.O. 2129.—In exercise of the powers conferred by sub-section (2) of section 1 of the Insurance (Amendment) Act, 1968 (62 of 1968), the Central Government hereby appoints the 1st day of June, 1969, as the date on which all the provisions of the said Act except those of sections 14 and 41 thereof, shall come into force.

[No. F. 51(17)-INS.I/69]

RAJ K. NIGAM, Dy. Secy

(राजस्व और बोमा विभाग)

नई दिल्ली, 26 मई, 1969

का० घा० 2130—बीमा (संशोधन) अधिनियम, 1968 (1968 का 62) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार जून, 1969 के प्रथम दिन को ऐसी तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के सभी उपबन्ध, उसकी धारा 14 और 41 के उपबन्धों को छोड़कर, प्रवृत्त हो जाएंगे।

[सं० का० 51(17)-बीमा-1/69.]

राज० के० निगम, उप सचिव ।

(Department of Revenue and Insurance)

CUSTOMS

New Delhi, the 31st May 1969

S.O. 2131.—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby appoints the officer mentioned in column (2) of the Table below to be the Collector of Customs and the officer mentioned in column (4) thereof to be the Assistant

Collector of Customs for the area mentioned in the corresponding entry in column (1) of the said Table:

THE TABLE

(1)	(2)	(3)	(4)
(vii) The Union territory of Pondicherry, Karaikal and Mahe	Collector of Central Excise, Madras	—	Assistant Collector of Customs and Central Excise, Pondicherry.

and further directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 213, dated the 1st February, 1963, namely:—

In the said notification, in the Table, for item (vii) and the entries relating thereto in columns (1), (2), (3) and (4), the following shall be substituted, namely:—

(1)	(2)	(3)	(4)
"(viii) The Union territory of Pondicherry Karaikal and Mahe	Collector of Central Excise, Madras	—	Assistant Collector of Customs and Central Excise, Pondicherry".

[No. 93/No. F. 2/1/69-L.C.I.]

STAMPS

New Delhi, the 31st May, 1969

S.O. 2132.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the stamp duty with which the bonds to the value of rupees fifty-five lakhs to be issued by the Uttar Pradesh Financial Corporation are chargeable under the said Act.

[No. 6/69-Stamps/No. F. 1/20/69-Cus.VII.]

M. S. SUBRAMANYAM, Under Secy.

CENTRAL BOARD OF EXCISE AND CUSTOMS

CUSTOMS

New Delhi, the 31st May 1969

S.O. 2133.—In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby rescinds the following notifications, namely:—

1. Central Board of Revenue notification No. 135-Customs, dated 1st November, 1954; and
2. Central Board of Revenue notification No. 177-Customs, dated 30th December, 1954.

[No. 92/No. F. 2/1/69-L.C.I.]

S.O. 2134.—In exercise of the powers conferred by section 54 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby directs

that the following amendment shall be made in the notification of the late Central Board of Revenue No. 158—Customs, dated the 22nd December, 1956, namely:—

In the said notification, for item (vii) and the entries relating thereto, the following shall be substituted, namely:—

“(vii) Pondicherry.

Assistant Collector of Customs and
Central Excise, Pondicherry.”

[No. 94/No. F. 2/1/69-LCI.]

M. S. SUBRAMANYAM, Under Secy.

भारत निर्वाचन आयोग

नई दिल्ली, 21 मई, 1969

एस० ओ० 2135.—लोक प्रतिनिधित्व अधिनियम, 1950 की धारा 13-क की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्वाचन आयोग, पाइंडचेरी सरकार के परामर्श से, श्री जी० गोपालकृष्णन के स्थान पर पाइंडचेरी सरकार के विधि सचिव श्री अ० रामकृष्ण राष्ट्र को उनके कार्य भार संभालने की तारीख से अगले आदेशों तक पाइंडचेरी संघ राज्य क्षेत्र के लिए मुख्य निर्वाचन अफिसर के रूप में एतद्वारा नाम निर्देशित करता है ।

[सं० 154/21/69.]

आदेश से,

ए० एन०. सैन, सचिव